Father and son killed in collision with 18-wheeler

Type: Verdict-Plaintiff

Amount: $83,934,862

State: Michigan

Venue: Wayne County

Court: Wayne County, Circuit Court, MI

Injury Type(s):
- *neck* - fracture, neck
- *other* - death; conscious pain and suffering

Case Type:
- *Motor Vehicle* - Passenger; Rear-ender; Tractor-Trailer; Multiple Vehicle
- *Wrongful Death* - Survival Damages

Case Name: Natalie Attianese as Personal Representative of the Estate of Jude Attianese, deceased, and as Personal Representative of the Estate of Zachary Attianese, deceased v. Jose Angel Nogueras, and Challenger Motor Freight, Inc, No. 19-015845-NI

Date: April 20, 2023

Plaintiff(s):
- Estate of Jude Attianese, (Male, 56 Years)
- Estate of Zachary Attianese, (Male, 20 Years)

Plaintiff Attorney(s):
- Judith A. Livingston; Kramer, Dillof, Livingston & Moore; New York NY for Estate of Jude Attianese,, Estate of Zachary Attianese
- Brian J. McKeen; McKeen & Associates, P.C.; Detroit MI for Estate of Jude Attianese,, Estate of Zachary Attianese
- Thomas A. Moore; Kramer, Dillof, Livingston & Moore; New York NY for Estate of Jude Attianese,, Estate of Zachary Attianese

Plaintiff Expert (s):
- Kenneth A. Mankowski D.O.; Neurology; Westerville, OH called by: Judith A. Livingston, Brian J. McKeen, Thomas A. Moore

Defendant(s):
- Jose Angel Nogueras
- Challenger Motor Freight Inc.

Defense Attorney(s):

- Brian Del Gatto; Wilson Elser; Phoenix, AZ for Jose Angel Nogueras, Challenger Motor Freight Inc.
- William S. Cook; Wilson Elser; Detroit, MI for Jose Angel Nogueras, Challenger Motor Freight Inc.
- Kate M. Beres; Wilson Elser; Detroit, MI for Jose Angel Nogueras, Challenger Motor Freight Inc.
- Taylor H. Allin; Wilson Elser; Phoenix, AZ for Jose Angel Nogueras, Challenger Motor Freight Inc.

Defendant Expert(s):

- Ljubisa J. Dragovic M.D.; Forensic Pathology; Pontiac, MI called by: for Brian Del Gatto, William S. Cook, Kate M. Beres, Taylor H. Allin

Facts:

Litigator Thomas Moore says that "unsullied credibility" helped his team secure a nearly $84 million verdict against a Canadian transportation company whose negligence caused the death of a father and son from New Jersey.

The verdict was handed up in Wayne County, Michigan, Circuit Court on Thursday, April 20, 2023.

"From beginning to end our credibility was unsullied," Moore said when asked how he thought the team won their case. "Throughout, there wasn't one element where on summation the defense could point correctly—they might have tried to do things and they did try—could point correctly to even the smallest claim we had made that was not borne out by the truth. And I think that was tremendously important."

Jude and Zachary Attianese were killed in June 2018 when a 77,400-pound, 18-wheel tractor-trailer crashed into their Ford Explorer as they traveled to a funeral near Detroit, Michigan. Jude, who was driving, had slowed to about 4 mph due to construction when the semi-truck—driven by Jose Nogueras—barreled into them from behind.

The incident was seen by an eyewitness, and reconstruction and an investigation showed that Nogueras had never braked and was going at least 55 mph at the point of impact, Moore said.

Moore, a Senior Partner at New York-based firm Kramer, Dillof, Livingston & Moore, was joined on the case by his wife and colleague Judith Livingston, a Senior Partner at the same firm.

The veteran trial lawyer said he and Livingston had seen a lot of tragedy in their time practicing, but the "startling" loss and "extraordinary confluence of circumstances" made this case stand out for him personally.

They were retained by mother and wife Natalie Attianese of Old Bridge, New Jersey, and

joined by local Michigan counsel Brian McKeen in the litigation against Canada-based Challenger Motor Freight and the driver.

On the day of opening statements, Moore said the company had acknowledged responsibility but continued to contest damages.

Moore said the driver at one point claimed that Jude had turned in front of him. And the company initially denied any liability at all.

The driver "was terribly negligent, but his negligence paled in comparison to the corporate negligence," Moore said. "In discovery during the deposition phase, we discovered something incredibly telling, which was that Jose Nogueras never should have been behind the wheel of that huge tractor-trailer on that fateful night, to begin with."

Nogueras, Moore said, suffers from Parkinson's disease and was taking three separate medications that warned against operating machinery as the user could fall asleep suddenly. The driver also had untreated obstructive sleep apnea at the time.

"We counted, he missed collectively 12 different posted signs regarding lanes narrowing, construction ahead, all of these signs," recalled Moore. "He had to be either asleep or so significantly impaired to not be remotely aware of his surroundings."

Nogueras is facing a pending criminal case relating to the incident, Moore said.

Before they admitted liability, the company deflected blame by saying the driver had been approved in 2015 by the Ministry of Transportation in Canada for the renewal of his license. But Moore's team found that, while the application reported Parkinson's disease, it failed to mention his diagnosis of obstructive sleep apnea.

Challenger then tried to hide behind Canadian privacy laws that prevent employers from inquiring about the medical conditions of employees, Moore said. However, those laws contain an exception that says the employers may inquire in circumstances where there is a bona fide occupational reason.

"What could be a more bona fide occupational reason than driving a 77,000-pound tractor-trailer?" Moore asked. "It was the obligation of the employer to investigate a potential safety hazard in their driver."

During depositions, Moore said an executive with the trucking company conceded that "no one" at the company was tasked with determining whether their drivers could operate the vehicles safely.

In addition to staying true to the facts discovered during diligent discovery, the litigator credited strong direct examination and careful jury selection as contributing to the win.

"I always believed that direct examination is an important part, if not the most important part, and it is at times the most important part [of a trial]," Moore shared. "So for any young lawyers out there: Concentrate on your direct examination as much as you concentrate on your cross."

During jury selection, Moore said his team worked to nix people who were opposed to the concept of money damages or who didn't want to serve, and sought jurors who could connect to their clients.

"You look for people with experience of family life, with families, if possible, who can relate to the losses that are so overwhelming in this case," Moore stated. "One has to be concerned that the jury that's selected will relate to your clients. And I just don't mean on the issues in the case, but also as people. Not everyone relates to everyone else."

"And it's a foolish lawyer who's not conscious of whether or not the person being considered for the jury is relating to her or him," he added.

Lawyers for Challenger Motor Freight and Nogueras did not immediately respond to messages. Defense attorney Brian del Gatto previously told the Detroit Free Press that the verdict was "highly excessive" and they planned to appeal.

Injury:

Jude and Zachary Attianese died at the scene.

Moore described the trial as a battle of experts and a battle of facts as they sought to prove that their client was entitled to damages for pre-collision fright and terror suffered by Jude and Zachary, damages for pain and suffering experienced by Jude and Zachary in the minutes after the collision and before they died, and damages for loss of society, companionship, and grief for their surviving family. Per defense counsel, the estates' lowest demand was $90 million, and the plaintiffs asked the jury to award $325 million.

On the issue of pain and suffering, the lawyer said the defense put forth a "formidable witness" in the form of a local medical examiner who testified frequently in a variety of cases. The defense expert claimed the father and son had died instantaneously.

"He certainly had a lot of experience, but we were able to take advantage of that in cross-examining him, in terms of his coy avoidance of answering questions under the guise of not really understanding what the whole thing was about," Moore recalled. "He was discredited."

Through their own witness, a neurologist, and vigorous cross-examination, Moore said the team was able to prove that Jude and Zachary suffered “almost unimaginable” pain for at least several minutes before they died. The collision left their spinal cords broken at the top of their neck, Moore explained—rendering them alive and aware but unable to breathe, speak or move while they slowly died.

Moore credited eyewitness testimony with decimating the defense argument against their pre-collision fright and terror claims. In a police report at the time, the eyewitness reported hearing the rumble of the 18-wheeler approaching the slowed vehicles, despite being further away from the tractor-trailer than the Attianese family vehicle.

“If our occupants, father and son, were aware of imminent disaster and imminent death seeing a truck, a huge tractor-trailer bearing down on them, they would have known that the chances of ever surviving the imminent collision would be nil to almost nothing,” Moore said.

In addition to that testimony, they had overwhelming circumstantial evidence—including that the 56-year-old Jude drove a panel truck for a living, delivering baked goods in Brooklyn for over 30 years. He taught all three of his children to drive, Moore said.

“Slowing from 70 on the highway, it was not reasonable to believe that in this such instance, Jude would not have looked in his rearview mirror,” Moore said. “I think the defense lost overwhelmingly on that issue, and lost significant credibility defending against that.”

Livingston conducted the direct examination of Zachary’s surviving sisters, who testified at trial about their father and brother.

“There were two things, above all, that united this family,” Moore shared. “One was the example of their father, and the other was baseball.”

Zachary, 20, had a promising baseball career ahead of him and had realistic aspirations of reaching Major League Baseball, Moore said.

The attorney said that pre-trial litigation included a significant amount of motion practice regarding the young athlete’s lost earning potential, but ultimately the team decided not to bring that to the jury as the matter was under appeal and they didn’t want to delay the trial.

Result: The jury determined that the defendants were negligent, which was a direct and proximate cause of Jude and Zachary Attianese's deaths. The jury also concluded that Jude and Zachary Attianese experienced fright and shock prior to the crash, and experienced mental anguish and conscious pain and suffering between the time of the accident and their deaths. The jury awarded the estates a total of $83,934,862.43.

Estate of Zachary Attianese

$ 9,000,000 Past Loss of Society Companion

$ 19,670,624.27 Future Loss of Society Companion

$ 12,000,000 fright and shock

$ 11,000,000 mental anguish and conscious pain and suffering

$ 51,670,624.27 Plaintiff's Total Award

Estate of Jude Attianese

$ 9,000,000 Past Loss of Society Companion

$ 3,264,238.16 Future Loss of Society Companion

$ 12,000,000 fright and shock

$ 8,000,000 mental anguish and conscious pain and suffering

$ 32,264,238.16 Plaintiff's Total Award

Trial Information:

Judge: Dana M. Hathaway

Trial Length:	6 days
Trial Deliberations:	0
Editor's Comment:	This report is based on an article published by VerdictSearch's sister publication, the New York Law Journal, an ALM publication. Additional information was gleaned from court documents and provided by plaintiffs' and defense counsel.
Writer	Melissa Siegel

Company infringed on DNA sequencing patents, plaintiffs said

Type: Verdict-Plaintiff

Amount: $83,400,000

State: Delaware

Venue: Federal

Court: U.S. District Court, District of Delaware, DE

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: Twinstrand Biosciences, Inc., & University of Washington v. Guardant Health, Inc., No. 1:21-cv-01126-GBW-SRF

Date: November 14, 2023

Plaintiff(s):
- University of Washington (, 0 Years)
- Twinstrand Biosciences Inc. (, 0 Years)

Plaintiff Attorney(s):
- Byron L. Pickard; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington
- Samantha G. Wilson; Young Conaway Stargatt & Taylor, LLP; Wilmington DE for Twinstrand Biosciences Inc., University of Washington
- Adam W. Poff; Young Conaway Stargatt & Taylor, LLP; Wilmington DE for Twinstrand Biosciences Inc., University of Washington
- R. Wilson "Trey" Powers III; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington
- Chandrika Vira; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington
- William H. Milliken; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington
- Anna G. Phillips; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington
- Tyler J. Dutton; Sterne, Kessler, Goldstein & Fox PLLC; Washington DC for Twinstrand Biosciences Inc., University of Washington

Plaintiff Expert (s):

- Lior S. Pachter Ph.D.; Biology; Pasadena, CA called by: Byron L. Pickard, Samantha G. Wilson, Adam W. Poff, R. Wilson "Trey" Powers III, Chandrika Vira, William H. Milliken, Anna G. Phillips, Tyler J. Dutton,
- Michael Metzker Ph.D.; Biotechnology; Houston, TX called by: Byron L. Pickard, Samantha G. Wilson, Adam W. Poff, R. Wilson "Trey" Powers III, Chandrika Vira, William H. Milliken, Anna G. Phillips, Tyler J. Dutton,
- DeForest McDuff Ph.D.; Patent Damages; Raleigh Durham, NC called by: Byron L. Pickard, Samantha G. Wilson, Adam W. Poff, R. Wilson "Trey" Powers III, Chandrika Vira, William H. Milliken, Anna G. Phillips, Tyler J. Dutton,

Defendant(s):

- Guardant Health Inc.

Defense Attorney(s):

- Mark D. Fowler; DLA Piper US; Palo Alto, CA for Guardant Health Inc.
- Edward R. Reines; Weil, Gotshal & Manges LLP; Redwood Shores, CA for Guardant Health Inc.
- Brian Biggs; DLA Piper US; Wilmington, DE for Guardant Health Inc.
- Derek C. Walter; Weil, Gotshal & Manges LLP; Redwood Shores, CA for Guardant Health Inc.
- Jeff Castellano; DLA Piper US; Wilmington, DE for Guardant Health Inc.
- Erin Larson; DLA Piper US; New York, NY for Guardant Health Inc.
- Susan Krumplitsch; DLA Piper US; Palo Alto, CA for Guardant Health Inc.
- Monica De Lazzari; DLA Piper US; Palo Alto, CA for Guardant Health Inc.
- Ellen Scordino; DLA Piper US; Boston, MA for Guardant Health Inc.
- Nancy Braman; DLA Piper US; Boston, MA for Guardant Health Inc.
- Justin Constant; Blue Peak Law Group; Houston, TX for Guardant Health Inc.

Defendant Expert(s):

- John Quackenbush Ph.D.; DNA; Boston, MA called by: for Mark D. Fowler, Edward R. Reines, Brian Biggs, Derek C. Walter, Jeff Castellano, Erin Larson, Susan Krumplitsch, Monica De Lazzari, Ellen Scordino, Nancy Braman, Justin Constant
- Snehit Prabhu Ph.D.; Biology; Stanford, CA called by: for Mark D. Fowler, Edward R. Reines, Brian Biggs, Derek C. Walter, Jeff Castellano, Erin Larson, Susan Krumplitsch, Monica De Lazzari, Ellen Scordino, Nancy Braman, Justin Constant
- Stephen L. Becker Ph.D.; Patent Damages; Austin, TX called by: for Mark D. Fowler, Edward R. Reines, Brian Biggs, Derek C. Walter, Jeff Castellano, Erin Larson, Susan Krumplitsch, Monica De Lazzari, Ellen Scordino, Nancy Braman, Justin Constant

Facts:

On May 14, 2019, plaintiff the University of Washington received a United States patent for a duplex DNA sequencing method that more accurately identifies genetic mutations. The technology aids in the early detection of cancer.

The university received a related patent a year later. The patents were numbered 10,287,631 and 10,760,127. Several inventors of this technology also founded plaintiff Twinstrand Biosciences, which is the exclusive licensee of the two patents.

Another company, Guardant Health, sells medical diagnostic kits. The plaintiffs alleged that some of these kits infringed on the subject patents, and the plaintiffs sued Guardant Health.

The plaintiffs also initially made infringement allegations involving other patents, but those claims were dismissed. Guardant's counterclaims for infringement were dismissed, as well.

During trial, the patents were referred to as the '631 patent and the '127 patent. Plaintiffs' counsel argued that Guardant willfully infringed Claim 1 of the '631 patent and Claims 24 and 30 of the '127 patent.

The defense argued that none of Guardant's products literally infringed on the subject patents. The defense further maintained that any infringement was not willful.

Defense counsel further contended that the subject patent claims were invalid. The defense maintained that the asserted claims were obvious and lacked sufficient written descriptions. The defense also alleged that the '631 patent's claim was indefinite and that the '127 patent's claims included subject matter that was unpatentable.

Injury:

The plaintiffs sought recovery of reasonable royalties, enhanced damages, attorneys' fees, interest and costs.

The defense said that any award should be limited to the amount proposed by Guardant's damages expert.

Result:

The jury determined that the plaintiffs proved Guardant infringed Claim 1 of the '631 patent and Claims 24 and 30 of the '127 patent. The jury further concluded that Guardant's infringement was willful.

The jury awarded the plaintiffs $83.4 million. The jury made this calculation by assigning a six percent royalty rate to a $1.39 billion revenue base.

University of Washington

Twinstrand Biosciences Inc.

Trial Information:

Judge: Gregory B. Williams

Trial Length: 5 days

Trial Deliberations: 0

Editor's Comment: This report is based on information that was gleaned from court documents. Additional information was provided by the Director of Communications for Sterne, Kessler, Goldstein & Fox. Plaintiffs' counsel and defense counsel did not respond to the reporter's phone calls.

Writer Melissa Siegel

Rapper Flo Rida claimed drink company breached contract

Type: Verdict-Plaintiff

Amount: $82,640,450

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

Case Type:
- *Contracts* - Breach of Contract
- *Fraud* - Fraudulent Concealment
- *Affirmative Defenses* - Statute of Limitations

Case Name: Strong Arm Productions USA Inc., Tramar Dillard p/k/a Flo Rida, and D3M Licensing Group, LLC v. Celsius Holdings Inc., No. CACE21008997

Date: January 18, 2023

Plaintiff(s):
- All plaintiffs (, 0 Years)
- D3M Licensing Group LLC (, 0 Years)
- Tramar Dillard p/k/a Flo Rida (, 0 Years)
- Strong Arm Productions USA Inc. (, 0 Years)

Plaintiff Attorney(s):
- Matthew DellaBetta; Kelley | Uustal; Fort Lauderdale FL for D3M Licensing Group LLC, Tramar Dillard p/k/a Flo Rida, Strong Arm Productions USA Inc.
- John J. Uustal; Kelley | Uustal; Fort Lauderdale FL for D3M Licensing Group LLC, Tramar Dillard p/k/a Flo Rida, Strong Arm Productions USA Inc.
- Cristina M. Pierson; Kelley | Uustal; Fort Lauderdale FL for D3M Licensing Group LLC, Tramar Dillard p/k/a Flo Rida, Strong Arm Productions USA Inc.
- Fan Li; Kelley | Uustal; Fort Lauderdale FL for D3M Licensing Group LLC, Tramar Dillard p/k/a Flo Rida, Strong Arm Productions USA Inc.

Plaintiff Expert (s):
- Marcie Bour C.P.A.; Accounting; Miami, FL called by: Matthew DellaBetta, John J. Uustal, Cristina M. Pierson, Fan Li

Defendant(s):
- Celsius Holdings Inc.

Defense Attorney(s):

- Rebecca M. Plasencia; Holland & Knight LLP; Miami, FL for Celsius Holdings Inc.
- Jose A. Casal; Holland & Knight LLP; Miami, FL for Celsius Holdings Inc.
- Suzanne M. Busser; Holland & Knight LLP; Fort Lauderdale, FL for Celsius Holdings Inc.

Defendant Expert(s):

- Scott Bouchner C.M.A.; Accounting; Miami, FL called by: for Rebecca M. Plasencia, Jose A. Casal, Suzanne M. Busser

Facts:

In April 2021, plaintiff D3M Licensing Group; a licensing agent for rapper Tramar Dillard, who performs professionally as Flo Rida; learned that its request for stock shares from energy drink company Celsius Holdings had been denied.

Back in March 2014, D3M had signed the contract on behalf of Dillard. Dillard worked with Celsius on a co-branded powder that could be poured into drinks and also promoted other Celsius products.

The contract included two bonus compensation provisions. One provision said that Dillard would receive 250,000 shares of Celsius stock if the company reached "$1 million in gross cumulative co-branded revenues in any 12-month period during the term" of the agreement. The other provision stated that Dillard would receive 500,000 shares of Celsius stock if the company sold "690,000 units of co-branded product" at any point.

The 2014 contract had a two-year term. In March 2016, the parties signed a 2.5-year contract that ended in October 2018. This contract stated that Dillard would receive royalties on a canned Celsius drink nicknamed "Flo's Flavor."

D3M ultimately asked Celsius for the 750,000 shares of stock in February 2021 and two months later, Celsius replied that it would not be issuing the shares.

Dillard, D3M and Dillard's production company, Strong Arm Productions USA, sued Celsius for breach of contract. The complaint was filed on May 4, 2021.

Plaintiffs' counsel admitted that there were several ways to interpret the 250,000 shares provision of the 2014 agreement. Plaintiffs' counsel argued that "co-branded revenues" could refer to all Celsius products that Dillard promoted and not just the powder product with Flo Rida's name. Under this interpretation of the provision, the $1 million benchmark would have been met in 2015, when the 2014 contract was still in effect.

Plaintiffs' counsel admitted that if "co-branded revenues" was interpreted differently, then Celsius did not reach the $1 million benchmark until February 2018. Plaintiffs' counsel claimed that, even if the benchmark was reached in February 2018, Dillard was still entitled to the 250,000 shares because the term of the 2014 contract continued after the second deal was signed in 2016. Plaintiffs' counsel maintained that the 2016 agreement

was a renewal of the 2014 contract, and that the bonus provisions mentioned in the 2014 contract still applied until October 2018.

To support this argument, plaintiffs' counsel pointed to press releases from Celsius that announced the 2016 agreement as a contract extension with Dillard. There was similar language in minutes from a Celsius board of directors meeting, plaintiffs' counsel noted.

The co-branded powder product was sold in various forms, including sticks. Customers could purchase individual sticks of the powder directly, or they could buy a box of 14 sticks. Plaintiffs' counsel argued that one stick was considered one unit of the product. Based on this definition of "unit," 690,000 units of the powder were sold by 2015. The plaintiffs claimed they were therefore entitled to the additional 500,000 shares of Celsius stock.

Plaintiffs' counsel noted that "sticks" of the product were sometimes referred to as "units" in internal documents. Plaintiffs' counsel further contended that sticks were sold as individual units.

Plaintiffs' counsel argued that Celsius breached the 2016 contract, as well. Plaintiffs' counsel noted that Celsius stopped giving Dillard royalties for the canned product once the 2016 contract expired in 2018. Plaintiffs' counsel maintained that the contract did not say when the royalty agreement would end and therefore the royalty should continue for as long as the canned product is sold.

The defense maintained that the "co-branded revenue" phrase in the 250,000 shares provision only referred to sales of the powder. Defense counsel argued that, based on this interpretation of the phrase, the $1 million benchmark was not reached until February 2018.

The defense further claimed that the 2016 agreement was not a renewal of the 2014 contract and that the plaintiffs were not entitled to the 250,000 shares because Celsius did not reach $1 million in co-branded revenue until after the 2014 contract ended.

To support the argument that the 2014 and 2016 contracts were separate agreements, the defense noted that the 2016 deal was not signed until a few weeks after the 2014 one ended. Additionally, the defense noted, the 2016 agreement also made no reference to the prior contract.

Defense counsel further argued that one box of the powder, not one stick, represented a unit of the product and maintained that, based on this definition of a "unit," Celsius has not yet reached 690,000 units sold. Therefore, defense counsel argued, the plaintiffs are not entitled to the additional 500,000 shares.

Defense counsel went on to argue that the plaintiffs were not owed any additional royalties once the 2016 contract ended in 2018 and that any breaches of the 2014 contract occurred prior to May 4, 2016, and were thus outside the five-year statute of limitations.

Plaintiffs' counsel maintained that the fraudulent concealment exception to the statute of limitations should apply. Plaintiffs' counsel similarly argued that Celsius was equitably estopped from asserting the statute-of-limitations defense and that Celsius failed to notify Dillard that the bonus provision benchmarks had been met.

Plaintiffs' counsel also maintained that the 2014 contract required Celsius to give the plaintiffs relevant sales data and that Celsius failed to do this.

The defense also argued that the plaintiffs waived their right to additional compensation under the subject provisions of the 2014 and 2016 agreements.

Injury:

The plaintiffs sought recovery of the value of 750,000 shares of Celsius stock. On the last day evidence was presented at trial, one share of Celsius stock was valued at $110.18. Plaintiffs' counsel asked the jury to award $82,635,000 for the unpaid stock shares.

Plaintiffs' counsel also sought $100,000 in unpaid royalties.

The defense did not provide alternative damages calculations.

Result:

The jury determined that Celsius breached the 2014 agreement and that Celsius achieved $1 million in co-branded revenues in a 12-month period. The jury determined that the benchmark was reached in February 2018.

The jury additionally stated that Celsius sold 690,000 units of co-branded products by February 2015. The jury determined that individual sticks of the product were considered units under the contract.

The jury also determined that the plaintiffs proved the terms of the 2014 agreement were extended by the 2016 agreement.

The jury did find that Celsius breached the contract before May 4, 2016. However, the jury determined that Celsius fraudulently concealed information, and that Celsius was equitably estopped from asserting a statute-of-limitations defense.

The jury additionally concluded that Celsius breached the royalty provision of the 2016 contract. The jury also said that the plaintiffs did not waive their right to compensation under any of the subject contract provisions.

The jury awarded the plaintiffs $82,640,450.

All plaintiffs

$ 27,545,000 damages for breach of the 250,000 shares provision

$ 5,450 unpaid royalties

$ 55,090,000 damages for breach of the 500,000 shares provision

$ 82,640,450 Plaintiff's Total Award

Strong Arm Productions USA Inc.

Tramar Dillard p/k/a Flo Rida

D3M Licensing Group LLC

Trial Information:

Judge:	David A. Haimes
Trial Length:	1 weeks
Trial Deliberations:	7.25 hours
Jury Vote:	6-0
Jury Composition:	1 male, 5 female
Post Trial:	Defense counsel has filed motions for judgment notwithstanding the verdict and for a new trial.
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

Writer Melissa Siegel

Jail failed to provide medical care to inmate, lawsuit alleged

Type: Verdict-Plaintiff

Amount: $82,000,000

State: Oklahoma

Venue: Federal

Court: U.S. District Court, Northern District, Oklahoma, OK

Injury Type(s):
- *brain* - subdural hematoma
- *other* - death; vomiting/vomition
- *arterial/vascular* - hypotension
- *pulmonary/respiratory* - respiratory distress

Case Type:
- *Wrongful Death*
- *Civil Rights* - 42 USC 1983; Prisoners' Rights

Case Name: Bridget Nicole Revilla v. Stanley Glanz, Sheriff of Tulsa County, in His Individual and Official Capacities; Correctional Healthcare Management of Oklahoma, Inc.; Correctional Healthcare Management, Inc.; Correctional Healthcare Management Companies, Inc.; and Andrew Adusei, No. 4:13cv315

Date: February 24, 2023

Plaintiff(s):
- Bridget Nicole Revilla, (Female, 0 Years)
- Estate of Gwendolyn Young, (Female, 54 Years)

Plaintiff Attorney(s):
- Daniel Smolen; Smolen & Roytman; Tulsa OK for Estate of Gwendolyn Young
- Bob Blakemore; Smolen & Roytman; Tulsa OK for Estate of Gwendolyn Young
- Bryon Helm; Smolen & Roytman; Tulsa OK for Estate of Gwendolyn Young,, Bridget Nicole Revilla

Defendant(s):
- Stanley Glanz
- Andrew Adusei M.D.
- Correctional Healthcare Companies Inc.
- Correctional Healthcare Management Inc.
- Correctional Healthcare Management of Oklahoma Inc.

Defense Attorney(s):

- Anthony C. Winter; Johnson Hanan Vosler Hawthorne & Snider; Oklahoma City, OK for Correctional Healthcare Management of Oklahoma Inc., Correctional Healthcare Management Inc., Correctional Healthcare Companies Inc.
- Ronald W. Chapman Sr.; Chapman Law Group; Troy, MI for Correctional Healthcare Management of Oklahoma Inc., Correctional Healthcare Management Inc., Correctional Healthcare Companies Inc.
- Sean Snider; Johnson Hanan Vosler Hawthorne & Snider; Oklahoma City, OK for Correctional Healthcare Management of Oklahoma Inc., Correctional Healthcare Management Inc., Correctional Healthcare Companies Inc.

Facts:

In early 2013, plaintiffs' decedent Gwendolyn Young, 54, was in the Tulsa County Jail serving a sentence for a misdemeanor. She died of a subdural hematoma. The medical care at the jail was provided by Correctional Healthcare Companies Inc.

Young's estate sued Correctional Healthcare. The lawsuit alleged that the company violated 42 USC section 1983 by failing to provide adequate medical care to Gwendolyn Young. The estate also sued some affiliates of the company; Tulsa County Sheriff Stanley Glanz, in his individual and official capacities; and the jail's medical director, Dr. Andrew Adusei, but they were no longer in the case at the time of trial. The estate settled with the county for $3.6 million.

The lawsuit included numerous other plaintiff estates, such as those of Bridget Nicole Revilla, Lisa Salgado and Gregory Brown, all making similar allegations, but they were not part of this trial. The Salgado and Brown estates had settled with Tulsa County for $1.8 million and $3.4 million, respectively, and settled with Correctional Healthcare for undisclosed amounts.

The case went to trial on the claims of Young's estate only.

Plaintiffs' counsel argued that Correctional Healthcare's nurses labeled Young a malingerer and ignored her documented signs and symptoms of a serious and life-threatening medical condition. Those signs and symptoms, counsel said, included dangerously low blood pressure, respiratory distress, days of vomiting blood and not eating, changes in mental status, dizziness, unresponsiveness, unsteadiness of gait and falling. Counsel alleged that Young was never seen by a physician.

According to plaintiffs' counsel, Correctional Healthcare's system of medical care was deficient and had been resulting in preventable deaths for years, and Correctional Healthcare knew it.

Correctional Healthcare denied the allegations.

Injury: Young's jail medical records indicated that Young suffered low blood pressure, respiratory distress, days of vomiting blood and not eating, changes in mental status, dizziness, unresponsiveness, unsteadiness of gait and falling. Plaintiffs' counsel said she had these symptoms for four days before her death from a subdural hematoma. Young was survived by her daughter, Deborah Young. Young’s estate sought compensatory damages and punitive damages.

Result: The jury found that Correctional Healthcare Companies Inc. violated Young’s constitutional right to adequate medical care. It determined that the estate’s damages totaled $82 million.

Plaintiffs' counsel noted that, seven months after Young's death, her conviction was overturned.

Bridget Revilla

Estate of Gwendolyn Young

$ 68,000,000 Punitive Exemplary Damages

$ 14,000,000 compensatory damages

$ 82,000,000 Plaintiff's Total Award

Trial Information:

Judge: Iain D. Johnston

Trial Length: 0

Trial Deliberations: 0

Jury Vote: 12-0

Post Trial:	The court entered judgment in the amount of $82 million for Young's estate. The judgment noted that all claims by all plaintiffs against all defendants had now been resolved, and that "[t]his civil case is now terminated." Correctional Healthcare Companies Inc. filed a motion for new trial.
Editor's Comment:	This report is based on information provided by counsel for Young's estate and counsel for Correctional Healthcare. Additional information was gleaned from court documents.
Writer	John Schneider

Drunk driver caused physical and psychological injuries: lawsuit

Type: Verdict-Plaintiff

Amount: $77,523,749

Actual Award: $77,136,130

State: Oregon

Venue: Multnomah County

Court: Multnomah County Circuit Court, OR

Injury Type(s):
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; crush injury, leg
- *back* - lower back; fracture, back; fracture, L5; sprain, lumbar; strain, lumbar; fracture, vertebra; fracture, L5; fracture, vertebra; fracture, transverse process
- *neck* - fracture, vertebra; fracture, transverse process
- *other* - fracture; infection; soft tissue; crush injury; coccyx/tailbone; fracture, coccyx; fracture, sacrum; physical therapy; nondisplaced fracture
- *pelvis* - fracture, pelvis
- *amputation* - leg; leg (below the knee)
- *mental/psychological* - anxiety; depression; post-traumatic stress disorder

Case Type:
- *Motor Vehicle* - Broadside; Passenger; Hit and Run; Multiple Impact; Multiple Vehicle; Alcohol Involvement

Case Name: M.M, N.S. and M.A. v. McMenamins, Inc., an Oregon corporation, dba Lighthouse Brewpub; Newport Pacific Corporation, an Oregon corporation, dba Mo's Restaurant; Beachbreakers Bar and Grill, Inc., an Oregon corporation, dba Maxwell's Restaurant & Lounge and dba Maxwell's at the Coast; and Fraternal Order of Eagles North Lincoln Aerie No. 2576; Perry Nicolopoulos, No. 20CV10189

Date: February 17, 2023

Plaintiff(s):
- M. A., (, 0 Years)
- M. M., (Male, 27 Years)
- N. S., (Female, 23 Years)

Plaintiff Attorney(s):
- Aaron DeShaw; Dr. Aaron DeShaw, Esq., P.C.; Portland OR for M. M.,, N. S.

Plaintiff Expert (s):

- John D. Fountaine C.R.C, C.C.M.; Vocational Rehabilitation; Bothell, WA called by: Aaron DeShaw
- James K. Boehnlein M.D.; Psychiatry; Portland, OR called by: Aaron DeShaw
- Jimmie L. Valentine Ph.D.; Alcohol Toxicology; Little Rock, AR called by: Aaron DeShaw
- Richard L. Riley C.P.; Prosthetics; Washoe Valley, NV called by: Aaron DeShaw
- Christina P. Tapia Ph.D.; Economics; Seattle, WA called by: Aaron DeShaw
- Delphine Engel M.D.; Trauma; Portland, OR called by: Aaron DeShaw

Defendant(s):

- McMenamins, Inc.
- Perry Nicolopoulos
- Newport Pacific Corp.
- Beachbreakers Bar and Grill Inc.
- Fraternal Order of Eagles North Lincoln Aerie No. 2576

Defense Attorney(s):

- Leslie Kocher-Moar; MacMillan Scholz & Marks LLC; Portland, OR for Perry Nicolopoulos

Facts:

On March 6, 2018, plaintiff M.M., 27, a deli manager, was exiting the parking lot of a restaurant along U.S. Route 101 in Lincoln City. His wife, plaintiff N.S., 23, was a passenger in the vehicle.

At around the same time, Perry Nicolopoulos was driving to the subject parking lot from Maxwell's Restaurant & Lounge. Nicolopoulos' vehicle struck the side of the plaintiffs' vehicle. M.M. and N.S., whose names were anonymized for litigation, then exited their vehicle to survey the damage.

At that point, Nicolopoulos drove his vehicle into the plaintiffs. M.M. pushed his wife away from the path of the vehicle, which struck the husband. Nicolopoulos then backed up his vehicle and struck the plaintiffs' vehicle again before fleeing the scene.

Nicolopoulos was later apprehended and charged with driving under the influence and other criminal offenses. He was ultimately convicted and sentenced to prison.

The male plaintiff suffered extensive lower-body injuries, including leg fractures that resulted in a below-the-knee amputation. His wife claimed back and psychological injuries.

The husband and wife sued Nicolopoulos. They alleged that Nicolopoulos was negligent in the operation of his vehicle. The plaintiffs' son, M.A., was initially named as a plaintiff but was dismissed from the case prior to trial.

The plaintiffs also initially sued numerous establishments that allegedly served alcohol to Nicolopoulos the night of the crash. One of those entities was Maxwell's Restaurant & Lounge.

The claims against the various entities resolved prior to trial. However, Maxwell's remained on the verdict form for the apportionment of liability.

According to the plaintiffs' toxicology expert, Nicolopoulos' blood alcohol level was between 0.27 and 0.30% at the time of the accident. Nicolopoulos' impairment was so severe that he could not remember which establishments had served him alcohol, the expert stated.

Plaintiffs' counsel played body camera footage from the arrest in which Nicolopoulos repeatedly asked what he had done wrong.

The defense stipulated to liability, and the trial solely addressed damages.

Injuries:

Injury:

M.M. was taken by ambulance to a hospital and admitted for five weeks. He was diagnosed with a crush injury to his right leg that included tibia and fibula fractures. He also had four nondisplaced pelvic fractures, a coccyx fracture, a sacrum fracture and an L5 transverse process fracture. He was ultimately diagnosed with post-traumatic stress disorder and chronic mild depression.

M.M. underwent approximately eight surgical repairs of his right leg. The surgeries were unsuccessful, and the plaintiff had his right leg amputated below the knee.

Following his hospitalization, M.M. underwent physical therapy and received a prosthesis. He also suffered ongoing infections to his right leg that were treated accordingly. At the time of trial, the plaintiff was still receiving care related to his prosthesis.

M.M. additionally received counseling for his post-traumatic stress disorder and depression.

According to the plaintiff's trauma surgery expert, M.M.'s amputated leg will cause him to experience a lifetime of limitations and potential musculoskeletal problems in his hips and back. The plaintiff's prosthetics expert testified that M.M. will require replacements for his prosthesis every five years.

M.M. was unable to return to his deli manager job following his amputation. He ultimately trained to become a truck driver but is only able to complete short driving jobs and requires accommodations. The plaintiff's vocational rehabilitation expert determined that M.M.'s physical injuries have significantly impaired his job prospects.

M.M. testified about his daily limitations. He said he continues to become more depressed about his amputation and its impact on his life.

M.M. sought recovery of $774,155 in past medical expenses, more than $1 million in future medical expenses and more than $300,000 in future lost earnings. He also sought damages for his past and future pain and suffering.

N.S. was initially diagnosed with strains and sprains of her lumbar spine. On the day of the accident, N.S. was briefly examined and released. In the ensuing days, she followed up with her primary care physician and complained of spinal pain.

Soon after the accident, N.S. began suffering multiple daily panic attacks, which prompted her to see a therapist. The therapist diagnosed N.S. with post-traumatic stress disorder, anxiety and depression.

In the ensuing years, the plaintiff underwent extensive counseling and took medication. Her panic attacks eventually waned. At the time of trial, N.S. was no longer receiving treatment.

The plaintiff's psychiatry expert causally related the wife's emotional trauma to the accident. The expert testified that the plaintiff would benefit from additional psychotherapy.

N.S. testified that the accident traumatically altered her life and changed her role as a parent. She talked about the repeated panic attacks and how she looks at the world in a different way. N.S. added that she constantly felt unsafe and thus asked their family to move to quieter surroundings to mitigate her emotional trauma. The family ultimately did this multiple times.

N.S. sought recovery of more than $50,000 in economic damages. She also sought damages for her past and future pain and suffering.

The defense maintained that M.M.'s projected future economic damages should be limited. The defense criticized plaintiffs' counsel for using a 2019 mortality table, which estimated a remaining life expectancy of 57.4 years, when determining M.M.'s damages. The defense used a 2020 mortality table, which Nicolopoulos' counsel argued was more accurate. Based on the 2020 table, M.M. had a remaining life expectancy of approximately 52 years, the defense noted.

The defense additionally attributed the female plaintiff's emotional injuries to her pre-existing pregnancy-related depression and anxiety.

Result:

The jury determined Nicolopoulos was 99.5 percent liable and Maxwell's Restaurant & Lounge was 0.5 percent liable. The jury awarded the plaintiffs $77,523,748.93, which was accordingly reduced to $77,136,130.19 based on the liability apportionment.

M. A.

N. S.

$ 52,964.75 economic damages

$ 5,000,000 noneconomic damages

$ 5,052,964.75 Plaintiff's Total Award

M. M.

$ 2,470,779.18 economic damages

$ 70,000,000 noneconomic damages

$ 72,470,779.18 Plaintiff's Total Award

Trial Information:

Judge: Leslie G. Bottomly

Demand: None reported

Offer: $300,000

Trial Length: 5 days

Trial Deliberations: 4 hours

Jury Vote: 12-0

Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel for Nicolopoulos did not respond to the reporter's phone calls. Counsel for the other defendants were not asked to contribute.
Writer	Aaron Jenkins

Plaintiffs claimed debtors fraudulently transferred assets

Type: Verdict-Mixed

Amount: $75,473,000

State: Texas

Venue: Dallas County

Court: Dallas County District Court, 191st, TX

Case Type:
- *Fraud*
- *Business Law* - Conspiracy

Case Name: Renate Nixdorf GMBH & Co. KG and Watercrest Partners, L.P. v. TRA Midland Properties, LLC, Midland Residential Invetment, LLC, Pillar Income Asset Management, Inc., TRA Apt West TX, LP, Transcontinental Realty Investors, Inc., American Realty Investors, Inc., Winter Sun Management, H198, LLC, Triad Realty Services, Ltd., Regis Realty Prime, LLC. and Longfellow Arms Apartments, Ltd. Midland Investors, LLC, Robert Shaw, Donald Carter, Sunchase American, LTD and Scott Long, No. DC-13-13354

Date: March 31, 2023

Plaintiff(s):
- Watercrest Partners, L.P. (, 0 Years)
- Renate Nixdorf GMBH & Co. KG (, 0 Years)

Plaintiff Attorney(s):
- Ray Guy; Frost Brown Todd LLP; Dallas TX for Renate Nixdorf GMBH & Co. KG, Watercrest Partners, L.P.
- Todd Harlow; Frost Brown Todd LLP; Dallas TX for Renate Nixdorf GMBH & Co. KG, Watercrest Partners, L.P.
- Thomas F. Allen; Frost Brown Todd LLP; Dallas TX for Renate Nixdorf GMBH & Co. KG, Watercrest Partners, L.P.

Defendant(s):

- H198, LLC
- Robert Shaw
- Scott Long
- Donald Carter
- TRA APT West TX, LP
- Winter Sun Management
- Midland Investors, LLC
- Sunchase American, Ltd.
- Regis Realty Prime, LLC.
- TRA Midland Props., L.L.C.
- Triad Realty Services, Ltd
- American Realty Investors, Inc
- Longfellow Arms Apartments, Ltd.
- Midland Residential Invetment, LLC
- Pillar Income Asset Management, Inc
- Transcontinental Realty Investors, Inc

Defense Attorney(s):

- Gregory Shamoun; Shamoun & Norman, LLP.; Dallas, TX for Pillar Income Asset Management, Inc, American Realty Investors, Inc, Winter Sun Management, H198, LLC, Triad Realty Services, Ltd, Regis Realty Prime, LLC., Longfellow Arms Apartments, Ltd., Transcontinental Realty Investors, Inc
- Brian P. Lauten; Brian Lauten, P.C.; Dallas, TX for Pillar Income Asset Management, Inc, American Realty Investors, Inc, Winter Sun Management, H198, LLC, Triad Realty Services, Ltd, Regis Realty Prime, LLC., Longfellow Arms Apartments, Ltd., Transcontinental Realty Investors, Inc
- Stephen A. Khoury; Kelsoe, Khoury, Rogers, Caughfield & Clark, PC; Dallas, TX for TRA Midland Props., L.L.C., Midland Residential Invetment, LLC, TRA APT West TX, LP

Facts:

On Nov. 10, 2009, plaintiffs Renate Nixdorf GMBH & Co. KG and Watercrest Partners, L.P. learned that W. Eric Brauss and Brauss's ex-wife, Christine Martin, had assigned all of their interests in TRA Midland Properties LLC and its affiliated entities to Midland Residential Investment LLC. At the time of the assignments, TRA Midland was 100 percent owned by TRA Apt West TX, L.P., which had made a $22.5 million capital contribution to TRA Midland for its ownership interest.

Through the assignments to Midland Residential Investment, Brauss and Martin orchestrated the transfer of an entity with $22.5 million in capitalization in return for no consideration whatsoever. At the time of the assignments, TRA Midland’s primary assets consisted of 21 apartment complexes located in Midland, valued at over $170 million. With Midland Residential Investment in control of TRA Midland, TRA Midland sold those apartment complexes in February 2012 to Midland Investors in a transaction that netted a $40 million profit.

Prior to those assignments, several investors began to realize that Brauss' real estate empire was crumbling. As a result, Brauss fired all of the employees at his management company and fled the country to avoid criminal prosecution. As a result, a flood of civil lawsuits were brought by investors who were allegedly defrauded in Brauss' myriad real

estate scams, including a lawsuit brought by Renate Nixdorf and Watercrest Partners against the management company, Brauss and Martin. Renate Nixdorf and Watercrest Partners alleged that the actions of Brauss, Martin and Brauss' management company constituted a breach of contract, a breach of fiduciary duty, alter ego and veil piercing. The matter proceeded to a bench trial, and in December 2009, Renate Nixdorf obtained a $48.75 million judgment against W. Eric Brauss, and Watercrest Partners obtained a $300,000 judgment against Martin.

Renate Nixdorf and Watercrest Partners then sued TRA Midland Properties LLC; Midland Residential Investment LLC; Pillar Income Asset Management Inc.; TRA Apt. West TX, LP; Transcontinental Realty Investors Inc.; American Realty Investors Inc.; Winter Sun Management; H198 LLC; Triad Realty Services Ltd.; Regis Realty Prime LLC.; Midland Investors LLC; Robert Shaw; Donald Carter; Sunchase American; Scott Long; and Longfellow Arms Apartments Ltd. In the 2013 lawsuit, Renate Nixdorf and Watercrest Partners asserted claims under the Texas Uniform Fraudulent Transfer Act. Specifically, the lawsuit alleged that the defendants' actions constituted fraudulent transfer, conspiracy to fraudulently transfer, and alter ego.

Midland Investors LLC, Shaw, Carter, Sunchase American and Long were all dismissed and/or settled out of the case before trial.

Renate Nixdorf and Watercrest Partners claimed that Brauss' and Martin's assignments of all of their interests in TRA Midland and its affiliated entities to Midland Residential Investment was fraudulent.

Plaintiffs' counsel contended that the sale proceeds in 2009 and 2012 were never paid to TRA Midland. Instead, counsel argued that, in order to prevent Renate Nixdorf and Watercrest Partners from collecting their judgments out of the sale proceeds, TRA Midland (controlled by Midland Residential Investment) diverted the $40 million profit to Pillar Income Asset Management Inc., an MRI-controlled entity that has no ownership interest whatsoever in TRA Midland or in the apartments that were sold to Midland Investors.

Defense counsel argued that no money received by Transcontinental Realty Investors, American Realty Investors, Winter Sun Management, H198, Pillar Income Asset Management or Longfellow Arms Apartments was transferred to those defendants with any intent by the transferor to hinder or delay a creditor. Counsel also argued that Renate Nixdorf and Watercrest Partners were not creditors of any transferor.

Injury:

Renate Nixdorf and Watercrest Partners claimed that they were unable to collect a debt owed to them. Renate Nixdorf claimed that it was a creditor and that Brauss and Martin, as the debtors, transferred assets to TRA Apt. West to Midland Residential Investment to keep Renate Nixdorf from getting its hands on the assets.

Result: Following a three-week trial in a fraudulent transfer case involving the assignment of ownership interests in a portfolio of apartment complexes, the jury rendered a mixed verdict.

The jury answered questions regarding the two transfers at issue in this case (the transfer of membership interests in 2009 and the transfer of sales proceeds in 2012). It ultimately answered all the questions in favor of Transcontinental Realty Investors, American Realty Investors and Pillar Income Asset Management. It found no actual fraud, constructive fraud, creditor-debtor relationship or alter ego liability against those defendants. However, in regard to the remaining defendants, the jury found that Brauss and Martin made transfers with the intent to defraud creditors. As a result, the jury found that Brauss and Martin were owners and/or members of Midland Residential Investment, TRA Midland and TRA Apt. West and that those defendants were responsible for Brauss' actions in November 2009. The jury also found that Midland Residential Investment, TRA Midland and TRA Apt. West were part of a conspiracy that caused harm to Renate Nixdor and Watercrest Partners.

The jury determined that the amount necessary to satisfy Renate Nixdor's claim totaled $75 million and that the amount necessary to satisfy Watercrest Partner's claim totaled $473,000. Thus, the plaintiffs' damages totaled $75,473,000.

According to defense counsel for Transcontinental Realty Investors, American Realty Investors, Winter Sun Management, H198, Pillar Income Asset Management or Longfellow Arms Apartments, although there were two transfers at issue in this case, the plaintiffs only sought to recover as to the 2012 transfer. However, the jury answered every question relating to the 2012 transfer in the defendants' favor.

Watercrest Partners, L.P.

Renate Nixdorf GMBH & Co. KG

Trial Information:

Judge: Gena Slaughter

Offer: no offer

Trial Length: 3 weeks

Trial Deliberations:	12 hours
Post Trial:	On June 15, 2023, plaintiffs' counsel moved for partial judgment, to disregard certain jury findings, for partial judgment notwithstanding the verdict, and for the application of attorneys' fees and costs. According to the motion, the jury made certain findings based on legally insufficient evidence, and the evidence conclusively established the opposite. Defense counsel responded to plaintiffs' counsel's motion. The defense also moved for a take-nothing judgment in the defendants' favor. The defense claimed that the court should enter a take-nothing judgment because there was a decisive verdict by the jury. Specifically, defense counsel argued that although there were two transfers at issue in this case, the plaintiffs only sought to recover as to the 2012 transfer. However, the defense noted that the jury answered every question relating to the 2012 transfer in the defendants' favor and found no actual fraud, no constructive fraud, no creditor-debtor relationship and no alter ego liability. Defense counsel also argued for additional and/or alternative grounds for relief. Specifically, the defense claimed that there were no transfers by Martin, that there was no evidence of value, that the "equity" in the properties was immaterial, that the alter ego findings must be disregarded, that there was no conspiracy as a matter of law, and that there was legally insufficient evidence.
Editor's Comment:	This report is based on information that was provided by plaintiff’s and defense counsel. Additional information was gleaned from court documents.
Writer	Jason Cohen

At-fault driver in fatal crash admitted to methamphetamine use

Type: Verdict-Plaintiff

Amount: $75,000,000

State: Missouri

Venue: St. Charles County

Court: St. Charles County Circuit Court, 11th, MO

Injury Type(s):
- *other* - death

Case Type:
- *Wrongful Death*
- *Motor Vehicle* - Speeding; Broadside; Red Light; Intersection; Multiple Vehicle

Case Name: Kenneth Batsell and Constance Batsell v. Aron Richardson, No. 2111-CC00996

Date: November 15, 2023

Plaintiff(s):
- Kenneth Batsell, (Male, 40 Years)
- Constance Batsell, (Female, 40 Years)
- Krystofer Batsell, (Male, 21 Years)

Plaintiff Attorney(s):
- Grant C. Boyd; The O'Brien Law Firm; St. Louis MO for Kenneth Batsell,, Constance Batsell,, Krystofer Batsell
- J. C. Pleban; Pleban & Associates; St. Louis MO for Kenneth Batsell,, Constance Batsell,, Krystofer Batsell

Plaintiff Expert (s):
- Kamal D. Sabharwal M.D.; Forensic Pathology; St. Louis, MO called by: Grant C. Boyd, J. C. Pleban
- Travis Jones; Accident Reconstruction; St. Louis, MO called by: Grant C. Boyd, J. C. Pleban

Defendant(s):
- Aron Richardson

Defense Attorney(s):

- James L. Hodges; Brinker & Doyen LLP; St. Louis, MO for Aron Richardson
- Tommy S. Powell; Brinker & Doyen LLP; St. Louis, MO for Aron Richardson

Insurers:

- State Farm Insurance Cos.

Facts:

On Nov. 17, 2018, plaintiffs' decedent Krystofer Batsell, 21, a freelance music journalist, was driving in St. Charles County. Aron Richardson ran a red light and broadsided the driver's side of Batsell's vehicle. Richardson, who was driving under the influence of methamphetamine, was fleeing from police at high speed at the time of the accident. Batsell died from his injuries.

Richardson pleaded guilty to second-degree murder, possession of methamphetamine, driving while intoxicated and resisting arrest. He was sentenced to prison.

Batsell's parents sued Richardson. They alleged wrongful death and negligence per se.

The defense argued that Richardson had accepted responsibility for his actions, was being punished enough and was paying his debt to society by serving his prison sentence.

Injury:

Batsell was killed. He was survived by his parents, Kenneth Batsell and Constance Batsell. His parents sought $50 million in actual damages and $100 million in damages for aggravating circumstances.

Result:

The jury found that Richardson was liable for both wrongful death and negligence per se. It determined that the plaintiffs' damages totaled $75 million, consisting of $50 million in actual damages and $25 million for aggravating circumstances.

Estate of Krystofer Batsell

Constance Batsell

Kenneth Batsell

Trial Information:

Judge: Rebeca Navarro-McKelvey

Trial Length:	2 days
Trial Deliberations:	1 hours
Jury Vote:	11-1
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter’s email message or phone call.
Writer	John Schneider

Children and mother claimed brain damage following PCB exposure

Type: Verdict-Mixed

Amount: $72,000,000

State: Washington

Venue: King County

Court: King County Superior Court, WA

Injury Type(s):
- *arm*
- *head* - headaches
- *brain* - brain damage
- *other* - fatigue; ablation; chiropractic
- *epidermis* - rash
- *face/nose* - face
- *neurological* - neurological impairment
- *sensory/speech* - vestibular deficits
- *arterial/vascular* - blood loss
- *mental/psychological* - anxiety; depression; behavioral disorder; cognition, impairment; memory, impairment; concentration, impairment
- *gastrointestinal/digestive* - diarrhea; gastrointestinal complications

Case Type:
- *Toxic Torts*
- *Products Liability* - Design Defect; Failure to Warn; Manufacturing Defect

Case Name: Maya E. Caldwell-Eleazer and Edward J. Eleazer, individually and as legal guardians of minors I.N.C.E. and A.B.E.; Crystal R. Clinger and Kevin S. Clinger, individually and as legal guardians of minors A.M.C., B.R.C., C.J.C., M.C.; Nathaniel B. McGaw; Bernadette F. Pajer and Bryan E. Pajer, individually and as legal guardians of minor J.A.P.; and Does 1-187 v. Monsanto Company, a Delaware corporation; Solutia, Inc., a Delaware corporation; Pharmacia LLC, a Delaware limited liability corporation, f/k/a Pharmacia Corporation; Monroe School District No. 103 d/b/a Monroe Public Schools; Union High School District No. 402; Snohomish Health District; and Roes 1-10, No. 18-2-54572-2 SEA

Date: July 14, 2023

Plaintiff(s):

- M. C., (Female, 0 Years)
- A. M. C., (Female, 5 Years)
- C. J. C., (Female, 3 Years)
- J. A. P., (, 0 Years)
- Bryan E. Pajer, (, 0 Years)
- Kevin S. Clinger, (, 0 Years)
- Edward J. Eleazer, (, 0 Years)
- Abraham B. Eleazer, (Male, 8 Years)
- Brianna R. Clinger, (Female, 7 Years)
- Crystal R. Clinger, (Female, 30 Years)
- Bernadette F. Pajer, (, 0 Years)
- Isabella N. Caldwell, (Female, 10 Years)
- Nathaniel B. McGaw, (, 0 Years)
- Maya E. Caldwell-Eleazer, (, 0 Years)

Plaintiff Attorney(s):

- Richard H. Friedman; Friedman | Rubin; Seattle WA for Isabella N. Caldwell,, Abraham B. Eleazer,, Crystal R. Clinger,, A. M. C.,, Brianna R. Clinger,, C. J. C.,, M. C.
- Colleen Durkin Peterson; PCVA, PLLC; Seattle WA for Isabella N. Caldwell,, Abraham B. Eleazer,, Crystal R. Clinger,, A. M. C.,, Brianna R. Clinger,, C. J. C.,, M. C.

Plaintiff Expert (s):

- Chad J. Prusmack M.D.; Neurosurgery; Lone Tree, CO called by: Richard H. Friedman
- Keri C. Hornbuckle Ph.D.; Civil; Iowa City, IA called by: Richard H. Friedman
- Lisa M. Mani M.D.; Occupational Medicine; Birmingham, AL called by: Colleen Durkin Peterson
- David Rosner Ph.D.; Public Health; New York, NY called by: Richard H. Friedman
- Kevin Coghlan M.S., CIH; Industrial Hygiene; Newton, MA called by: Richard H. Friedman
- Pamela J. Lein Ph.D.; Pharmacology; Davis, CA called by: Richard H. Friedman
- Pamela Mahoney Ph.D.; Epidemiology; Valley Glen, CA called by: Richard H. Friedman
- Bradley A. Jabour M.D.; Neuroradiology; Los Angeles, CA called by: Richard H. Friedman
- Kenneth R. Spaeth M.D.; Occupational Medicine; New York, NY called by: Colleen Durkin Peterson
- Michael H. Shannon M.D.; Endocrinology; Olympia, WA called by: Colleen Durkin Peterson
- Richard Perillo Ph.D.; Neuropsychology; San Francisco, CA called by: Richard H. Friedman
- Richard L. DeGrandchamp Ph.D.; Toxicology; Evergreen, CO called by: Richard H. Friedman

Defendant(s):

- Pharmacia LLC
- Snohomish Health District
- Monroe School District No.103
- Union High School District No. 402
- Solutia, Inc., a Delaware corporation
- Monsanto Company, a Delaware corporation

Defense Attorney(s):

- Jon A. Strongman; Shook, Hardy & Bacon L.L.P.; Kansas City, MO for Pharmacia LLC
- Hildy Sastre; Shook, Hardy & Bacon L.L.P.; Miami, FL for Pharmacia LLC
- Jennifer L. Campbell; Bryan Cave Leighton Paisner LLP; Seattle, WA for Pharmacia LLC
- Susan Werstak; Shook, Hardy & Bacon L.L.P.; St. Louis, MO for Pharmacia LLC

Defendant Expert(s):

- Uresh S. Patel M.D.; Radiology; Mercer Island, WA called by: for Jon A. Strongman

Facts:

Starting in 2011, plaintiffs Isabella Caldwell, 10, Abraham Eleazer, 8, and Crystal Clinger, along with Clinger's four minor children, ranging in ages from 3 to 7 years old, were allegedly exposed to polychlorinated biphenyls, or PCBs, at Sky Valley Education Center, in Monroe.

PCBs are a family of chemical compounds used in electrical equipment. After studies showed a link between PCB exposure and various health problems, including cancer, Congress authorized the Environmental Protection Agency to ban the production of PCBs in 1976.

The subject school's fluorescent light ballasts contained PCBs as components and the caulking around some of the school's doors and windows also allegedly contained PCBs. The PCB-containing products were installed no later than 1977.

In 2014, Monroe public schools were tested for PCBs, and elevated levels were found. Remediation efforts lasted until about 2017. As a result, Isabella and Abraham, Crystal Clinger and Crystal Clinger's four children claimed they were harmed by the PCB exposure.

The respective guardians for Isabella and Abraham, and Crystal Clinger, acting individually and on behalf of her four minor children, sued the manufacturer of the PCBs, Pharmacia LLC. They alleged that Pharmacia's PCB-containing products were defectively designed and manufactured and that Pharmacia failed to warn about the dangerous of exposure to the PCB contained in its products.

The plaintiffs also sued Pharmacia's predecessor, Monsanto Co.; a Monsanto subsidiary, Solutia Inc.; Monroe Public Schools; Union High School District No. 402; and the municipal corporation responsible for public health in Snohomish County, Snohomish Health District. However, those defendants were let out of the case. In addition, the father of the Clinger children, Kevin Clinger, and the guardians of Isabella and Abraham, Maya Caldwell-Eleazer and Edward Eleazer, initially sued the defendants, but their claims were voluntarily non-suited, and the case initially included claims by the Pajer family, but those claims were transferred to another lawsuit. Thus, the matter proceeded to trial with the claims of Isabella and Abraham, Crystal Clinger, and the Clinger children against Pharmacia only.

This case was one of several alleging PCB exposure at Sky Valley. One case went to trial in 2021 and ended in a $185,150,000 verdict. In one of the other Sky Valley PCB-exposure cases, a jury awarded 13 plaintiffs a total of $275 million in October 2022.

In the subject case, counsel for Isabella and Abraham, Crystal Clinger, and the Clinger children argued that the plaintiffs were exposed to PCBs in the indoor air and dust, and on surfaces. Thus, plaintiffs' counsel argued that the exposure occurred through inhalation, ingestion and dermal contact.

Plaintiffs' counsel argued that Pharmacia knew long before 1976 that PCBs were extremely dangerous. Counsel argued that, nevertheless, the company continued to represent that PCBs were safe and purvey the mixtures for use in public buildings, including schools. Plaintiffs' counsel further argued that Pharmacia failed to conduct appropriate testing. Per plaintiffs' counsel, a Monsanto employee performed tests in the 1970s that supposedly showed the PCBs were safe, but that the tests in question were allegedly fraudulent. Plaintiffs' counsel argued that while the employee was later indicted for the supposed fraud, Monsanto hired him back and continued to use his studies to support its claim that PCBs are harmless.

Pharmacia's counsel maintained that PCBs are safe. Counsel argued that if the plaintiffs were exposed to PCBs at all, the levels of exposure were too low to have been a proximate cause of the alleged injuries. Counsel further argued that even if the PCBs did cause injuries to the plaintiffs, the school district should be held liable for failing to timely remove the chemical compounds.

Defense counsel additionally made a statute of limitations argument, contending that Crystal Caldwell should have brought her claims sooner.

Injury:

Siblings Isabella and Abraham both attended Sky Valley for several years, starting in 2011. Isabella was 10 years old at the time, and Abraham was 8.

Isabella was diagnosed with an endocrine condition called Hashimoto's thyroiditis. She also claimed a neurotoxic brain injury. She alleged that the PCBs caused fatigue, forgetfulness, brain fog and an inability to focus. She also developed behavioral disturbances along with anxiety and depression. Isabella claimed she continues to suffer from headaches and struggles to follow step-by-step instructions.

Abraham alleged that he sustained neurotoxic brain damage, which causes extreme mood swings, brain fog and headaches. He experienced a significant delay in puberty, as evidenced by his open growth plates. He experienced bullying as a result. Abraham claimed that he also struggles with navigation and cannot walk around his college campus or drive to a local store without a GPS.

Crystal Clinger claimed she sustained a neurotoxic brain injury, which causes brain fog, tiredness, headaches, memory problems, disorientation, and gait and balance issues. She saw a chiropractor for her balance problems. Clinger was also diagnosed with menorrhagia, or abnormal uterine bleeding. The severity required her to receive iron infusions and, later, undergo a uterine ablation. Clinger's providers advised that she will eventually require a hysterectomy if her condition persists.

Clinger alleged that Sky Valley's program encouraged parents to frequently visit campus and participate in classes. Parents were also encouraged to bring their infant and toddler children to campus. She alleged that as a result, her children attended and/or visited Sky Valley from 2011 to 2016. Clinger herself came to the campus with her children during the school day. She also visited the campus three times while she was pregnant with her youngest child (the plaintiff only identified in court documents with the initials "M.C."). Clinger claimed she then brought her baby to campus within 30 days of her birth and repeatedly breastfed her at Sky Valley.

Plaintiffs' counsel contended that Clinger's youngest child, M.C., was affected by the PCBs in utero and suffered additional consequences when she consumed her mother's breast milk. Counsel contended that the effects of PCBs are intensified in breast milk and that M.C. learned to walk and crawl on the Sky Valley carpets, which were allegedly filled with PCBs.

M.C. claimed damage to her gastrointestinal tract and lining, which causes her daily and chronic diarrhea. She also claimed she has trouble absorbing nutrients, so she constantly feels hungry and has to eat repeatedly throughout the day. M.C. further claimed that she sustained a neurotoxic brain injury. She alleged the condition causes problems with reading, learning, memory and retention. She claimed that as a result, she has to receive accommodations in school.

Crystal Clinger's eldest child, Brianna Clinger, who was 7 at the time of the alleged exposure, claimed that the PCBs caused a neurotoxic brain injury. She complained of frontal headaches and memory issues that caused academic challenges. Her family noted that Brianna was a leader at a young age but became less decisive as she grew older. The plaintiffs' experts attributed this change to the neurotoxicity of PCBs as well.

Another of Crystal Clinger's children, who was only identified in court documents with the initials of "A.M.C.," was allegedly exposed to the PCBs when she was 5 years old. She alleged she sustained a neurotoxic brain injury that causes balance and memory issues. She claimed the injury prevented her from progressing in competitive gymnastics. She also claimed the PCBs caused skin rashes on her arms and face. A.M.C. further claimed she has unpredictable, frequent periods, which plaintiffs' counsel linked to the PCB exposure. Plaintiffs' counsel pointed to decades-old literature indicating PCBs are endocrine disruptors that affect individuals' hormones.

Crystal Clinger's fourth child, who was identified in court documents with the initials of

"C.J.C.," first visited the school at age 3, when she accompanied her mother and older siblings. She claimed she sustained a neurotoxic brain injury that affected her ability to focus. She was also diagnosed with misophonia, which makes her particularly sensitive to sounds, following her alleged exposure at Sky Valley. C.J.C. claimed the PCBs also caused rashes.

In addition, Crystal Clinger, A.M.C. and C.J.C. claimed that they all suffer from toxic-induced loss of tolerance. They claimed they experience headaches when they encounter certain chemical or artificial smells, so they have to use all-natural and fragrance-less detergents.

All four Clinger children additionally alleged immunosuppression. They claimed they get sick frequently and that their illnesses last longer than they should.

The plaintiffs each sought recovery of compensatory and punitive damages.

Defense counsel disputed whether any of the plaintiffs had a brain injury. Counsel argued that the children's symptoms stemmed from their prior medical histories, genetics and/or COVID-19. The defense also argued that Isabella's Hashimoto's disease was genetic because she had a family history of thyroid conditions.

Result:

The jury ruled for the plaintiffs on the design defect, manufacturing defect and failure to warn claims. However, it could not agree on the damages awards for five of the seven plaintiffs. As a result, the jury awarded $72 million in combined damages to Isabella and M.C., and a mistrial was declared as to the other plaintiffs' claims.

The remaining five plaintiffs – Abraham, Brianna, A.M.C., C.J.C. and Crystal Clinger – will have their cases retried. Since liability was already determined, the ensuing trial will only concern the five plaintiffs' damages claims.

Kevin Clinger

J. P.

Bryan Pajer

Bernadette Pajer

Nathaniel McGaw

$ 50,000,000 Punitive Exemplary Damages

$ 10,000,000 compensatory damages

$ 60,000,000 Plaintiff's Total Award

C. C.

Brianna Clinger

A. C.

Crystal Clinger

Abraham Eleazer

Isabella Caldwell

$ 10,000,000 Punitive Exemplary Damages

$ 2,000,000 compensatory damages

$ 12,000,000 Plaintiff's Total Award

Edward Eleazer

Maya Caldwell-Eleazer

Trial Information:

Judge:	James E. Rogers
Trial Length:	9 weeks
Trial Deliberations:	4 days
Jury Composition:	12 white
Post Trial:	Defense counsel filed motions for a new trial and for a reduction of the verdict. The motions were denied. Both sides filed appeals.
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Pharmacia's counsel did not respond to the reporter's phone calls. Counsel for the remaining defendants were not asked to contribute.
Writer	Melissa Siegel

Plaintiffs: Drunken driver struck and killed their daughter

Type: Verdict-Plaintiff

Amount: $69,250,000

State: Texas

Venue: Brazos County

Court: Brazos County District Court, 272nd, TX

Case Type:
- *Gross Negligence*
- *Motor Vehicle* - Pedestrian; Hit and Run; Single Vehicle; Multiple Vehicle; Alcohol Involvement

Case Name: Robert Beatty and Suzanne Beatty v. Pedro Damion Puga, No. 20-003187-CV-272

Date: January 18, 2023

Plaintiff(s):
- Robert Beatty, (Male, 0 Years)
- Suzanne Beatty, (Female, 0 Years)

Plaintiff Attorney(s):
- Michael D. Stacy; Juneau, Boll & Stacy PLLC; Addison TX for Robert Beatty,, Suzanne Beatty
- George A. Boll; Juneau, Boll & Stacy PLLC; Addison TX for Robert Beatty,, Suzanne Beatty

Defendant(s):
- Pedro Damion Puga

Defense Attorney(s):
- Michael John Griffin III; Griffin & Griffin; Magnolia, TX for Pedro Damion Puga
- Marilyn O. Griffin; Griffin & Griffin; Magnolia, TX for Pedro Damion Puga

Insurers:
- Alinsco Insurance

Facts:

On Sept. 14, 2019, plaintiffs' decedent Carlynn Beatty, 19, a sophomore at Texas A&M University, was walking home with her roommates, in College Station, in the early morning hours. Pedro Damion Puga was driving a sport utility vehicle while under the influence of drugs and alcohol. Puga drove over a curb on Texas Avenue and struck Beatty, who sustained severe injuries and, a week later, died. She was survived by her parents.

Shortly before Beatty was struck, another driver had called 911 to report Puga for erratic and possibly drunken driving.

After hitting Beatty, Puga fled the scene. Minutes later, as shown by security footage, he pulled into a parking lot and wiped his finger along his vehicle's A-pillar, which had blood on it. He then drove away, and footage from another security camera showed the SUV jumping another curb and slamming its front right, the same part that hit Beatty, into a stone wall.

Puga was arrested shortly thereafter, after being chased on foot by police. When questioned by the arresting officer, he denied having hit anyone and said his vehicle was damaged in a prior accident. According to police, Puga said he needed an ambulance because he was so intoxicated from drugs.

Puga pleaded guilty to manslaughter and causing an accident involving a death. He was sentenced to prison.

Beatty's parents sued Puga. The lawsuit alleged that he was negligent and grossly negligent in the operation of his vehicle. Plaintiffs' counsel argued in part that Puga knew he had hit Beatty, and that he intentionally ran his vehicle into the stone wall to try to cover up the fact that he had done so.

Puga stipulated to negligence.

Regarding gross negligence, his attorneys made no argument against it. However, on cross-examination, Puga did maintain that he was "blacked out" and "unconscious" at the time of the accident. The definition of gross negligence included actual, subjective awareness of the risks involved and conscious indifference to the rights, safety, or welfare of others.

Puga attended trial, in prison clothes.

Injury: Beatty sustained a traumatic brain injury, several fractures and internal injuries. She was transported by ground ambulance to a hospital in Bryan and then by air ambulance to a hospital in Houston. Her parents stayed by her side until her death, on Sept. 21, 2019.

Beatty's parents each sought $1.5 million for past loss of companionship and society; $10 million for future loss of companionship and society; $3 million for past mental anguish; and $20 million for future mental anguish. Thus, the plaintiffs sought combined actual damages of $69 million.

They sought unspecified punitive damages.

The defense argued that Puga had already been punished enough, by the criminal justice system, and that the jury should award zero for punitive damages. For actual damages, defense counsel suggested $1 million for each parent.

Result: The jury found gross negligence by Puga and determined that the plaintiffs' damages totaled $69,250,000. The award consisted of $1.5 million for each parent for past loss of companionship and society; $10 million for each parent for future loss of companionship and society; $3 million for each parent for past mental anguish; $20 million for each parent for future mental anguish; and $250,000 in punitive damages.

Suzanne Beatty

Robert Beatty

Trial Information:

Judge: John L. Brick

Demand: none

Offer: $30,000 (pre-suit; policy limit)

Trial Length: 2 days

Trial Deliberations: 3.5 hours

Jury Vote: 12-0

Jury Composition: 7 male, 5 female; 9 white, 2 black, 1 Hispanic

Editor's Comment: This report is based on information that was provided by plaintiff’s and defense counsel.

Writer John Schneider

Motorcycle crash caused debilitating injuries: lawsuit

Type: Verdict-Plaintiff

Amount: $66,090,000

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

Injury Type(s):

- *arm* - fracture, arm; fracture, ulna; fracture, arm; fracture, radius; fracture, humerus; scar and/or disfigurement, arm
- *leg* - fracture, leg; fracture, femur; fracture, leg; fracture, fibula
- *neck*
- *elbow* - fracture, elbow; fracture, olecranon
- *other* - orbit; hepatic; fracture; symphysis; laceration; laparotomy; zygomatic arch; closed reduction; dislocated spine; fracture, distal; physical therapy; pins/rods/screws; sacroiliac joint; avulsion fracture; Glasgow coma scale; comminuted fracture; dislocation, radius; fracture, displaced; scar and/or disfigurement
- *pelvis* - fracture, pelvis
- *epidermis* - contusion; road rash
- *face/nose* - face; LeFort fracture; fracture, facial bone; fracture, orbit; fracture, facial bone; fracture, zygomatic arch
- *foot/heel* - foot drop (drop foot); drop foot
- *hand/finger* - finger; fracture, finger; fracture, metacarpal
- *neurological* - nerve damage/neuropathy; nerve damage, ulnar nerve
- *surgeries/treatment* - skin graft; debridement; external fixation
- *pulmonary/respiratory* - contusion, pulmonary
- *gastrointestinal/digestive* - liver

Case Type:

- *Motor Vehicle* - Left Turn; Motorcycle; Intersection; Multiple Vehicle

Case Name: Nardino A. Dargenson v. Demetrius B. Cooper, No. CACE22012622

Date: March 21, 2023

Plaintiff(s):

- Nardino A. Dargenson, (Male, 32 Years)

Plaintiff Attorney(s):

- Christopher M. Drury; Drury Law Firm; Coral Gables FL for Nardino A. Dargenson
- Benjamin J. Lucas; Benjamin Lucas, P.A.; Miami FL for Nardino A. Dargenson

Defendant(s):

- Demetrius B. Cooper

Defense Attorney(s):

- None Reported for Demetrius B. Cooper

Insurers:

- Progressive Casualty Insurance Co.

Facts:

On July 31, 2022, plaintiff Nardino Dargenson, 32, a bartender and business manager, was operating his motorcycle at the intersection of Fourth Avenue and 16th Street in Fort Lauderdale. Demetrius Cooper was operating a sedan at the same intersection.

Cooper made a left turn into the motorcycle. Dargenson claimed injuries to his neck, arms, elbows, liver, face, lungs, back, femur, clavicle and pelvis. He also claimed finger and leg injuries.

Dargenson sued Cooper, claiming Cooper was negligent in the operation of his vehicle and that Cooper violated his right of way.

Cooper never responded to the lawsuit. A default judgment was entered, and the matter proceeded to an empty-chair, damages-only trial.

Injury:

Dargenson was transported from the scene to Broward General Hospital where he was admitted for three months.

When he arrived at the hospital, he was assigned a score of 13 on the Glascow coma scale. He had a large laceration of his left, non-dominant arm that was bleeding heavily and required a tourniquet.

Dargenson was diagnosed with a pelvic fracture. The fracture was deemed an "open book fracture," which involves front and rear separation of the left and right halves of the pelvis. He also had a right hepatic lobe laceration and multiple facial fractures. Specifically, he suffered fractures of the left orbital wall and floor. He additionally had a right zygomaticomaxillary complex fracture and a Le Fort fracture.

Dargenson also had comminuted fractures of the left arm’s distal humerus, radius and ulna and an open fracture of the left elbow. He further claimed a right proximal ulnar fracture and fractures of the right hand's second, third and fourth metacarpals, which are the bones

that join the second, third and fourth fingers with the base of the hand.

Dargenson further suffered a puncture wound to his neck and road rash to his clavicle. Dargenson's other injuries included bilateral pulmonary contusions, a left lateral femoral condyle fracture and a fibular head avulsion fracture.

Dargenson suffered damage to his left ulnar nerve, as well. Upon his discharge from the hospital, he was diagnosed with dislocations of his right and left radial heads, and of his sacroiliac and sacrococcygeal joints. The discharge diagnoses also included a right proximal ulna fracture, an open displaced fracture of the olecranon process, an open fracture of the distal end of the humerus, a traumatic separation of the pubic symphysis and pelvic fractures.

Dargenson remained in intensive care until Aug. 18. During that time, he had multiple surgeries. The day of the accident, he had an exploratory laparotomy. Doctors also packed his pelvic fracture and packed and washed out his elbow fracture. The next day, Dargenson had another elbow washout plus a washout of his abdomen. The pelvic packing was also removed.

On Aug. 2, Dargenson received external fixators for his pelvis and left elbow. He also had a closed reduction of his left sacroiliac joint with percutaneous pinning.

On Aug. 5, Dargenson underwent an irrigation and debridement of damaged tissue in his left elbow. He then had a reduction and percutaneous fixation of his metacarpal fractures on Aug. 18.

Once Dargenson was stabilized, he was transferred to another floor of the hospital on Aug. 19. He remained there until Oct. 26. Dargenson underwent several other surgeries during that time. On Aug. 24, he received a skin graft for his left wrist. Doctors also repaired his ulnar nerve that day.

Then, on Aug. 30, doctors applied an external tissue expander to partially close the abdominal wound from the laparotomy. The wound was fully closed on Sept. 7. Dargenson then had a left elbow flap re-elevated and transposed on Sept. 21. Dargenson underwent some rehabilitation after leaving the hospital.

Dargenson's orthopedic injuries have left him bedridden and confined to a wheelchair. His mother, a retired nurse practitioner, has to care for him even though she is limited by her own neck injuries.

Dargenson has scars on his abdomen, neck and left forearm. He said that his injuries led to bilateral foot drop: weakness or paralysis of the muscles that control the front part of a

foot. He cannot use his right arm, and he has limited use of his left one.

Plaintiff's counsel argued that Dargenson will require attendant care in the future and will need four more surgeries to improve the function of his arms.

Plaintiff's counsel noted how active Dargenson was prior to the accident. He played football in college and had traveled to 13 different countries. He enjoyed photography as a hobby and owned his own photography business. He also managed an Airbnb business and worked as a bartender.

Dargenson sought recovery of past and future medical expenses, past and future lost earnings and damages for his past and future pain and suffering.

Result: The jury awarded Dargenson $66,090,000.

Nardino Dargenson

$ 1,500,000 Past Medical Cost

$ 9,500,000 Future Medical Cost

$ 90,000 Past Lost Earnings

$ 3,000,000 Future Lost Earnings

$ 45,000,000 Future Pain Suffering

$ 7,000,000 Past Pain Suffering

$ 66,090,000 Plaintiff's Total Award

Trial Information:

Judge: Fabienne E. Fahnestock

Trial Length:	1 days
Trial Deliberations:	45 minutes
Jury Vote:	6-0
Jury Composition:	3 male, 3 female; 1 Asian, 1 Black, 4 white
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents.
Writer	Melissa Siegel

Plaintiff: Packaging and copies of products sold by company

Type: Verdict-Plaintiff

Amount: $65,942,256

Actual Award: $71,220,398

State: California

Venue: Federal

Court: United States District Court, Southern District, San Diego, CA

Case Type:
- *Intellectual Property* - Patents; Copyrights; Infringement

Case Name: Talavera hair products, inc., a Nevada corporation v. Taizhou Yunsung Electrical Appliance Co. Ltd., a business entity, and the individuals, partnerships and unincorporated associations identified on exhibit “1”, No. 3:18cv823

Date: January 11, 2023

Plaintiff(s):
- Talavera Hair Products Inc. (, 0 Years)

Plaintiff Attorney(s):
- Darren J. Quinn; Law Offices of Darren J. Quinn; Del Mar CA for Talavera Hair Products Inc.

Plaintiff Expert (s):
- James English; Plastics (IP); Oceanside, CA called by: Darren J. Quinn
- Richard M. Holstrom C.P.A., C.F.F., C.F.E.; Damage Analysis; San Diego, CA called by: Darren J. Quinn

Defendant(s):

- Donop
- GARYOB
- ANIMON
- Aosend
- AoStyle
- Kosmasl
- MKLOPED
- Mokshee
- AuPolus
- La Perel
- Mocsighe
- Bed Store
- Fosen Man
- Hairsmile
- JIN BISON
- Judi Shop
- NAMO SHOP
- NewPollar
- chaouki00
- 247deal.tx
- Enjoy&Life
- MyBeautyCC
- Ciao Fashion
- Classy Trend
- anothercloud
- 4beautyqueens
- Cai ming zhil
- Georgy's Store
- Beauty CrayCray
- DiLilloVincenzo
- Lanmpu Creative
- Gold Coast Beauty
- Core Name Products
- Beisirui Hair Store
- allforyoushopper.usa
- Lab Star International
- Lale Beauty / NewPollar
- Taizhou Yunsung Electrical Appliance Co., Ltd.
- The Individuals, Partnerships and Unincorporated Associations Identified on Exhibit 1

Defense Attorney(s):

- Tony T. Liu; Focus Law; Anaheim, CA for Taizhou Yunsung Electrical Appliance Co., Ltd.

Facts:

Since 2017, plaintiff Talavera Hair Products Inc., which sells a patented product under the name Split-Ender, designed to quickly and easily trim split ends from hair, claimed that Taizhou Yunsung Electrical Appliance Co. Ltd., a Chinese company that markets and sells electric hair trimmers and is a competitor, sold and offered infringing products and copies of plaintiff's packaging and its manual for the Split-Ender.

Plaintiff's founder and inventor Victor Talavera claims to have invented the first split end hair trimming device in history. The plaintiff claimed that what made his product unique is that it trims split ends without cutting the length. Plaintiff Talavera Hair Products Inc. owns three United States patents for its split end hair trimming device. Plaintiff Talavera also owns registered copyrights on the packaging and manual for its split end hair trimming device.

Plaintiff sued Taizhou Yunsung Electrical Appliance Co. Ltd. as the manufacturer, as well as numerous sellers on Amazon.com and eBay.com, alleging patent and copyright infringement. The plaintiff obtained default judgment or dismissed the defendants who sold on Amazon.com or eBay.com after obtaining a temporary restraining order/preliminary injunction against them. The jury trial was only against defendant Taizhou.

The court determined on summary judgment that the products marked as FASIZ, LESCOLTON, HAIR TRIMMER and UMATE at issue in the trial infringed on the plaintiff's '021, '108, and '811 patents and that the packaging and instruction manual for products marked as FASIZ, LESCOLTON, HAIR TRIMMER and UMATE at issue in the trial infringed plaintiff's registered copyrights

Plaintiff's counsel contended a main issue at trial was whether Taizhou had any involvement in the manufacture or sale of infringing split end hair trimming products marked as FASIZ, LESCOLTON, HAIR TRIMMER and UMATE and their related packaging and manuals.

Taizhou contended that it was not the manufacturer or source of the infringing items sold on Amazon.com.

Injury:

Plaintiff sought recovery for lost profits related to Taizhou's patent and copyright infringement, as well as statutory damages for Taizhou's copyright infringement.

Result:

The jury found that Taizhou infringed on plaintiff's patents and copyrights and awarded the plaintiff $65,942,256. Subsequently, the jury also made findings that resulted in defendant Taizhou being jointly and severally liable with the defaulted Amazon.com seller defendants for an additional $5,278,142. In total, plaintiff obtained a judgment of $71,220,398 against Taizhou.

Talavera Hair Products Inc.

$ 300,000 maximum willful statutory additional damages for copyright infringement

$ 65,642,256 lost profits from patent infringement

$ 65,942,256 Plaintiff's Total Award

Trial Information:

Judge: Ruth Bermudez Montenegro

Trial Length: 2 days

Trial Deliberations: 1 days

Jury Vote: 8-0

Post Trial: On Jan. 17, 2023, the final judgment acknowledged that the jury also made findings that resulted in defendant Taizhou being jointly and severally liable with the defaulted Amazon.com seller defendants for an additional $5,278,142. Accordingly, in total, plaintiff obtained a judgment of $71,220,398 against defend Taizhou.

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

Moped driver paralyzed in crash, subsequently died

Type: Verdict-Plaintiff

Amount: $65,887,298

Actual Award: $80,270,059

State: Georgia

Venue: Cobb County

Court: Cobb County, State Court, GA

Injury Type(s):
- *other* - death; conscious pain and suffering
- *paralysis/quadriplegia* - quadriplegia

Case Type:
- *Motor Vehicle* - Left Turn; Cell Phone; Intersection
- *Wrongful Death* - Survival Damages

Case Name: Courtland Greene Phillips as administrator of the Estate of Juanita Gail Pritchard and for the benefit of the next of kin of Juanita Gail Pritchard v. Marite Mendoza, No. 19-A-1556

Date: August 03, 2023

Plaintiff(s):
- Estate of Juanita Gail Pritchard, (Female, 54 Years)

Plaintiff Attorney(s):
- James A. Neuberger; Neuberger Law, LLC; Atlanta GA for Estate of Juanita Gail Pritchard
- Ben C. Brodhead III; Brodhead Law, LLC; Atlanta GA for Estate of Juanita Gail Pritchard
- Michael B. Terry; Bondurant, Mixson & Elmore, L.L.P.; Atlanta GA for Estate of Juanita Gail Pritchard
- Ashley B. Fournet; Brodhead Law, LLC; Atlanta GA for Estate of Juanita Gail Pritchard
- Holli Clark; Brodhead Law, LLC; Atlanta GA for Estate of Juanita Gail Pritchard
- Michael Arndt; Brodhead Law, LLC; Atlanta GA for Estate of Juanita Gail Pritchard

Plaintiff Expert (s):

- Carey E. McCarter N.P.; Nurse Practitioner; Columbus, MS called by: James A. Neuberger, Ben C. Brodhead III, Ashley B. Fournet, Michael Arndt
- Erik A. Trosclair M.D.; Emergency Medicine; Marietta, GA called by: James A. Neuberger, Ben C. Brodhead III, Ashley B. Fournet, Michael Arndt
- Franklin Lin M.D.; Neurosurgery; Marietta, GA called by: James A. Neuberger, Ben C. Brodhead III, Ashley B. Fournet, Michael Arndt

Defendant(s):

- Marite Mendoza

Defense Attorney(s):

- R. Christopher Harrison; Downey & Cleveland, LLP; Marietta, GA for Marite Mendoza
- Jackson A. Griner; Downey & Cleveland, LLP; Marietta, GA for Marite Mendoza

Insurers:

- Progressive Casualty Insurance Co.

Facts:

A Cobb County State Court jury has awarded upward of $80 million in damages after a 2016 collision left a Mississippi woman paralyzed.

Plaintiff counsel now anticipate more than $30 million in additional attorney fees but tell the Daily Report the nine-figure outcome is too little, too late.

“The biggest hurdle that we suffered was time,” said Ben C. Brodhead of Brodhead Law. “Unfortunately, [the plaintiff] passed away before we were able to get any financial help to her.”

Plaintiff counsel said Juanita Gail Prichard of Columbus, Mississippi, had been driving a moped eastbound along Jim Owens Road in Kennesaw when a westbound motorist’s failure to yield while turning left onto Owens Meadow Run forever changed the plaintiff’s life.

“As a result of the collision, Gail Pritchard sustained serious injuries which resulted in quadriplegia,” read the amended plaintiff complaint. “Due to Gail Pritchard’s medical condition, she resided in hospitals and nursing homes until her injuries resulted in her death on October 23, 2019.”

Brodhead teamed with firm colleagues Ashley Fournet, Holli Clark and Michael Arndt to advance the personal injury case filed against defendant Marite Mendoza by Neuberger Law owner James A. Neuberger in January 2019.

Motivated to help Pritchard secure funding for healthcare treatments, plaintiff counsel made multiple attempts to resolve the case with the defendant’s insurer, per Brodhead.

“It sounded as if several million dollars could be offered to resolve the case by the defense,” Brodhead said. ”But, so far, there have not been any offers other than policy limits of $25,000, with strings attached, that actually has been offered.”

With their client’s health deteriorating and her medical bills exceeding $887,000, Brodhead said plaintiff counsel made an offer of judgment under O.C.G.A. 9-11-68 (B) at $17.5 million and a $40 million interest offer under O.C.G.A. 51-12-14.

As concern mounted for Pritchard’s health, Brodhead said plaintiff counsel lowered a subsequent offer “all the way down to $7.5 million” in hopes of advancing an agreement.

But when prolonged negotiations produced no resolution, plaintiff counsel’s focus shifted to getting the case before a jury capable of awarding damages.

“We tried to get the case to trial as soon as we could, so that we could get help Ms. Pritchard get additional treatments to try to save her life,” Brodhead said. “We felt as if the insurance company, which was Progressive Insurance, was trying to delay the case.”

Brodhead said Pritchard, and her father who took over her case following her death, both died before the dispute made it to trial on July 28, 2023.

More than six years after the collision, opposing counsel gathered before Cobb County State Court Judge Diana M. Simmons for what would become a five-day liability dispute.

Advising as an appellate consultant, Bondurant Mixson & Elmore partner Mike Terry joined the plaintiff team at trial.

Plaintiff counsel urged jurors to award damages for Pritchard’s pain and suffering as well as the subsequent medical, funeral and burial expenses incurred by the plaintiff’s estate.

Across the aisle, R. Chris Harrison and Jackson A. Griner of Downey and Cleveland handled Mendoza’s defense on behalf of Progressive Insurance.

The defense duo did not respond to a Daily Report request for comment but in a pre-trial defense brief denied that their client’s “actions caused or contributed to the accident at issue,” in a pre-trial defense.

“The defendant contests all issues and allegations, including but not limited to: negligence, proximate cause, damages, claims presented pursuant to O.C.G.A § 13-6-11, and claims for punitive damages,” the defense brief read.

During the initial damages phase of trial, defense counsel asked the jury to return "a defense verdict and zero compensation," according to Brodhead. After four hours of deliberations, the jury returned a nearly $66 million plaintiff verdict on Aug. 3, instead.

Plaintiff counsel said the addition of more than $14 million in pre-judgment interest increased the plaintiff outcome to more than $80.2 million in awarded damages.

The verdict, which is one of the largest achieved in Cobb County State Court, left plaintiff counsel dissatisfied.

"I thought it was too low for the pain and suffering and the value of the life," Brodhead told the Daily Report. "I thought what she went through was so horrible that no amount of money would be sufficient."

Brodhead noted that plaintiff counsel anticipated recouping more than $30 million in additional attorneys' fees under the O.C.G.A. 9-11-68 fee statute, since the trial team achieved more than 125% of its offer of judgment to resolve the case.

However, plaintiff counsel's claim for additional fees tied to a frivolous defense claim under 9-11-68 (E) did not go over well during a second phase of trial with the jury. After deliberating for two hours, jurors returned a verdict in favor of the defense that Brodhead said plaintiff counsel now intends to appeal.

"My contention on that is that the jury gave a defense verdict on 9-11-68 (E) because the pattern charge on preponderance of the evidence was used. We argued against the pattern charge on preponderance of the evidence," Brodhead said. "We believe that if the correct definition of preponderance of the evidence had been used, that the jury would have found in our favor on that, and that we would be entitled to a new trial on 9-11-68 (E)."

Brodhead said plaintiff counsel also are entitled to attorneys' fees under O.C.G.A. 13-6-11 for the defendant's alleged stubborn litigiousness prior to the filing of the suit.

Brodhead said, "We'll be asking the Court of Appeals, and possibly the trial court, to allow us to reconvene a jury regarding 13-6-11 and 9-11- 68 (E)."

Injury: Pritchard sustained serious injuries that resulted in quadriplegia. She spent her time hospitalized and in nursing homes from 2016 until her injuries resulted in her death on Oct. 23, 2019.

Plaintiff's counsel argued that Pritchard suffered tremendous pain and suffering prior to her death. Counsel further maintained that Pritchard's reasonable life expectancy was 30 years.

The estate sought reimbursement of medical and funeral expenses of at least $887,844.88, damages for pain and suffering, and wrongful death damages.

The defense disputed proximate cause and damages.

Result: The jury awarded $887,297.88 in special damages, $35 million for Pritchard's pain and suffering and $30 million for wrongful death, totaling $65,887,297.88. With prejudgment interest and costs, the total judgment was $80,270,058.63.

Estate of Juanita Pritchard

Trial Information:

Judge: Diana M. Simmons

Demand: n/a

Offer: $25,000 (policy limits)

Trial Length: 1 weeks

Trial Deliberations: 4 hours

Post Trial: Post-trial, the court awarded $14,382,465.75 for prejudgment interest and $295 for court costs, for a total judgment of $80,270,058.63.

Editor's Comment: This report is based on an article published by VerdictSearch's sister publication, the Daily Report, an ALM publication.

Writer Jason Cohen

Video evidence proves First Amendment abuses: lawsuit

Type: Verdict-Plaintiff

Amount: $63,500,000

Actual Award: $66,210,000

State: Florida

Venue: Federal

Court: U.S. District Court, Southern District, FL

Case Type:
- *Constitutional Law* - Freedom of Speech

Case Name: William O. Fuller and Martin Pinilla II v. Joe Carollo, No. 1:18-cv-24190-RS

Date: June 01, 2023

Plaintiff(s):
- William O. Fuller, (Male, 0 Years)
- Martin Pinilla II, (Male, 0 Years)

Plaintiff Attorney(s):
- Courtney Caprio; AXS Law Group, PLLC; Miami FL for Martin Pinilla II,, William O. Fuller
- Jeff Gutchess; AXS Law Group, PLLC; Miami FL for Martin Pinilla II,, William O. Fuller
- Rossana Arteaga-Gomez; AXS Law Group, PLLC; Miami FL for Martin Pinilla II,, William O. Fuller
- Amanda Suarez; AXS Law Group, PLLC; Miami FL for Martin Pinilla II,, William O. Fuller

Defendant(s):
- Joe Carollo

Defense Attorney(s):

- Benedict P. Kuehne; Kuehne Davis Law, P.A.; Miami, FL for Joe Carollo
- Mason A. Pertnoy; Krinzman Huss Lubetsky Feldman & Hotte; Miami, FL for Joe Carollo
- Marc D. Sarnoff; Shutts & Bowen LLP; Miami, FL for Joe Carollo
- Amber C. Dawson; Cole, Scott & Kissane, P.A.; Miami, FL for Joe Carollo

Facts:

Imagine a tactical lawforce unit raiding a business by charging up a back staircase during its busiest hours to investigate an alleged code violation.

That video was among the evidence that a Miami-based team showed a federal jury in Fort Lauderdale to prove a Miami commissioner repeatedly inflicted First Amendment retaliation on the owners of the nightclub Ball & Chain, who supported the elected official's political rival. But because of the implications of the verdict, the city of Miami said the litigation is far from over.

Courtney Caprio, Rossana Arteaga-Gomez, and Jeff Gutchess, who are partners at the AXS Law Group in Miami, served as the lead attorneys for the plaintiffs, Bill Fuller and Martin Pinilla. They sued Joe Carollo, the Miami commissioner.

"The theme of the case was protecting the First Amendment, and the conduct was continuing over the five-and-a-half years since we filed the initial complaint," said Caprio, who was joined by law firm litigators Amanda Suarez and Joanna Niworowski. "Our task was to present the most compelling story based on a somewhat non-existent record."

Victoria Méndez, the Miami City Attorney, said in a statement that the verdict, including at least $2 million in legal fees, would be covered by its excess carrier coverage—pending an appeal.

"The city is cognizant that the final outcome of this civil litigation could have a material impact on the other active litigation involving these same plaintiffs and the city of Miami," Méndez said. "The necessity to appeal this jury verdict is significant, in that it ensures the city's ability to enforce our code, protect our quality of life, and guarantee the safety and well-being of our residents and visitors."

Less than three years after the Ball & Chain owners supported Carollo's political opponent in 2017, the city closed the Little Havana nightclub, citing fire safety and handicap access code violations, prompting Fuller to call the commissioner a "total cucaracha," or cockroach.

Fuller and Pinilla are the principals of the Miami-based Barlington Group.

A second related lawsuit named the city as a defendant.

Meanwhile, Gutchess said the litigation dragged on for years without discovery. For instance, the case was stayed while it went up to the U.S. Supreme Court—which declined to hear Carollo's appeal of a lower court's decision that he was not entitled to qualified immunity—before the plaintiffs' counsel had "to scramble" when the court set an immediate trial date.

And to present the most compelling story, Caprio said civil lawyers are usually "mired in documents and deposition testimony to determine the best way to put on your case and in this event, we geared it up in a month."

That involved piecing together an alleged pattern of targeting through documents obtained by public records requests.

At the same time, the plaintiffs faced the narrative posed by defense counsel that the Ball & Chain owners were "constant code violators."

But eliciting compelling testimony on the stand posed a challenge because most "witnesses were intimidated and afraid of Joe Carollo," Gutchess alleged. And to induce the subpoenaed witnesses to "tell their full story on the stand" required "earning their trust and confidence."

Throughout the seven-week trial, AXS litigators painted a picture of Carollo as an elected official who bullied anyone who opposed him.

Emilio Gonzalez, who served as city manager from 2018 until early 2020, and former Miami Police Chiefs Jorge Colina and Art Acevedo were among those who corroborated the claims in federal court, plaintiffs' counsel said. But it was Fuller who may have provided jurors with the most compelling testimony.

Fuller, on the stand for a day and a half, described the emotional and reputational harm he sustained from Carollo's alleged actions, including when teams of police sporting tactical gear raided his business dozens of times, always at night and on the weekends, mainly to search for framed documents that the police had available to them electronically, Caprio said.

"I would incorporate videos into the testimony so the jury could see visually, like the teams of different police and code enforcement rushing up the stairs," Caprio added. "To allow him to connect with the jury, I took a backseat and let Bill shine. Until we went on the witness stand, we never rehearsed it. That's why it was so genuine and authentic."

Injury: The plaintiffs initially sought $10 million for alleged emotional distress and damages to their Little Havana nightclub. They also sought $10 million in punitive damages to punish and deter Carollo's alleged conduct.

Result: The jury determined that Carollo intentionally committed acts that violated Fuller and Pinilla's rights to free speech or assembly. The jury also concluded that Carollo's actions were done under color of state law. The jury further determined that Carollo's conduct caused the plaintiffs' injuries, and that Carollo would not have taken the same actions toward the plaintiffs if they had not exercised their First Amendment rights.

The jury awarded $29,200,000 to Pinilla and $34,300,000 to Fuller. The court subsequently awarded the plaintiffs $2,650,000 in attorneys' fees and $60,000 in costs.

William Fuller

$ 25,700,000 Punitive Damages

$ 8,600,000 compensatory damages

$ 34,300,000 Plaintiff's Total Award

Martin Pinilla II

$ 21,900,000 Punitive Damages

$ 7,300,000 compensatory damages

$ 29,200,000 Plaintiff's Total Award

Trial Information:

Judge: Rodney Smith

Trial Length: 7 weeks

Trial Deliberations:	0
Post Trial:	Plaintiffs’ counsel filed a motion for a permanent injunction. Defense counsel filed a motion for new trial and a renewed motion for judgment as a matter of law. The defense additionally filed an alternative motion for remittitur. The defense also filed a notice of appeal.
Editor's Comment:	This report is based on an article published by VerdictSearch's sister publication, the Daily Business Review, an ALM publication. Additional information was gleaned from court documents and provided by plaintiffs' and defense counsel.
Writer	Melissa Siegel

Plaintiff: Homeowner unaware land was previously chemical pit

Type: Verdict-Plaintiff

Amount: $63,000,000

State: California

Venue: Santa Barbara County

Court: Superior Court of Santa Barbara County, Santa Maria, CA

Injury Type(s):
- *cancer* - myeloma; chemotherapy

Case Type:
- *Toxic Torts* - Hazardous Waste
- *Premises Liability* - Failure to Warn

Case Name: Kevin Wright v. Union Oil Company of California and Continental Paragon Corp., No. 21CV00925

Date: June 08, 2023

Plaintiff(s):
- Kevin Wright, (Male, 62 Years)

Plaintiff Attorney(s):
- Don A. Ernst; Ernst Law Group, APC; San Luis Obispo CA for Kevin Wright
- Terry J. Kilpatrick; Ernst Law Group, APC; San Luis Obispo CA for Kevin Wright
- Taylor Ernst; Ernst Law Group, APC; San Luis Obispo CA for Kevin Wright
- Brian J. Ward; Trial Lawyers for Justice; Ventura CA for Kevin Wright
- Erin L. Powers; Trial Lawyers for Justice; Ventura CA for Kevin Wright
- Jakob Z. Norman; Trial Lawyers for Justice; Bozeman MT for Kevin Wright

Plaintiff Expert (s):

- Dean W. Felsher M.D., Ph.D.; Oncology; Stanford, CA called by: Don A. Ernst, Terry J. Kilpatrick, Taylor Ernst, Brian J. Ward, Erin L. Powers, Jakob Z. Norman
- Jill Ryer-Powder Ph.D., D.A.B.T.; Toxicology; Coronado, CA called by: Don A. Ernst, Terry J. Kilpatrick, Taylor Ernst, Brian J. Ward, Erin L. Powers, Jakob Z. Norman
- James T. Wells Ph.D., P.G.; Geological; Santa Barbara, CA called by: Don A. Ernst, Terry J. Kilpatrick, Taylor Ernst, Brian J. Ward, Erin L. Powers, Jakob Z. Norman
- Howard Hu M.D., M.P.H.; Preventive Medicine; Los Angeles, CA called by: Don A. Ernst, Terry J. Kilpatrick, Taylor Ernst, Brian J. Ward, Erin L. Powers, Jakob Z. Norman

Defendant(s):

- Continental Paragon Corp.
- Union Oil Company of California

Defense Attorney(s):

- Robert E. Meadows; King & Spalding LLP; Houston, TX for Union Oil Company of California
- Jason Levin; Alston & Bird LLP; Los Angeles, CA for Union Oil Company of California
- Jennifer Bonneville; Alston & Bird LLP; Los Angeles, CA for Union Oil Company of California

Facts:

In 2015, plaintiff Kevin Wright, 62, was diagnosed with multiple myeloma, a type of blood cancer that can be caused by benzene exposure. Prior to this, in 1985, Wright built his home on land he purchased in Santa Maria, unaware that it had previously been a chemical pit for Union Oil Company, a Chevron subsidiary, in the 1970s.

Wright sued Union Oil Company of California alleging negligence and premises liability.

Wright lived at the house for two years and was diagnosed 30 years later with cancer. Plaintiff's counsel contended Union Oil Company of California failed to properly clean the site of chemicals per regulatory standards and failed to warn the plaintiff of the land's former use.

Defense counsel disputed plaintiff's claims and contended the site was cleaned up in 2015 per regulatory standards, and in 2016 the Santa Barbara Health Department issued a, "no further action letter."

Injury: Wright was diagnosed in 2015 with multiple myeloma. He has received two stem cell treatments and has undergone chemotherapy. As of this report Wright's cancer is in remission and he is undergoing chemotherapy once a month, which he says he will continue to do in the future.

Wright sought compensatory damages for pain & suffering as well as punitive damages.

Result: The jury found for Wright on his claims and awarded him $22 million to cover his pain and suffering and $41 million in punitive damages. In total Wright was awarded $63 million.

Kevin Wright

$ 41,000,000 Punitive Exemplary Damages

$ 22,000,000 Compensatory Damages for Pain & Suffering

$ 63,000,000 Plaintiff's Total Award

Trial Information:

Judge: James F. Rigali

Demand: $11,225,000

Offer: $50,000

Trial Length: 23 days

Trial Deliberations: 0

Jury Vote: 12-0 (liability/causation), 9-3 (compensatory damages), 9-3 (punitive damages)

Jury Composition:	3 male, 9 female
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla

Former employee accused of contract, duty breaches

Type: Verdict-Mixed

Amount: $62,054,745

State: California

Venue: Federal

Court: United States District Court, Central District, Los Angeles, CA

Case Type:
- *Contracts* - Breach of Contract
- *Intentional Torts* - Conspiracy; Racketeering
- *Employment* - Employment Agreement
- *Corporations* - Breach of Fiduciary Duty; Breach of Duty of Loyalty
- *Intellectual Property* - Misappropriation of Trade Secrets

Case Name: Skye Orthobiologics, LLC, a Delaware Limited Liability Company and Human Regenerative Technologies, LLC, a Delaware Limited Liability Company v. CTM Biomedical, LLC, a Delaware Limited Liability Company, Bryan Banman, Gardner Rogers, Mike Stumpe, Pablo Seoane, Veterans Medical Distributors, Inc., a Florida Corporation, Nathan Boulais and CTM Medical, Inc., a Delaware Corporation, No. 2:20-cv-03444-DMG-PVC

Date: August 29, 2023

Plaintiff(s):
- Skye Orthobiologics LLC (, 0 Years)
- Human Regenerative Technologies LLC (, 0 Years)

Plaintiff Attorney(s):

- Ryan D. Saba; Rosen Saba, LLP; Beverly Hills CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC
- James R. Rosen; Rosen Saba, LLP; El Segundo CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC
- Laura Kelly St. Martin; Rosen Saba, LLP; El Segundo CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC
- Neda Farah; Rosen Saba, LLP; El Segundo CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC
- Todd M. Lander; Rosen Saba, LLP; El Segundo CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC
- Allison Renee Owens; Rosen Saba, LLP; El Segundo CA for Skye Orthobiologics LLC, Human Regenerative Technologies LLC

Plaintiff Expert (s):

- Henry J. Kahrs CPA; Economics; Orange, CA called by: Ryan D. Saba, James R. Rosen, Laura Kelly St. Martin, Neda Farah, Todd M. Lander, Allison Renee Owens
- Daniel M. Cislo Esq.; Patent; Los Angeles, CA called by: Ryan D. Saba, James R. Rosen, Laura Kelly St. Martin, Neda Farah, Todd M. Lander, Allison Renee Owens

Defendant(s):

- Mike Stumpe
- Bryan Banman
- Pablo Seoane
- Gardner Rogers
- Nathan Boulais
- CTM Medical, Inc. a Delaware Corporation
- CTM Biomedical, LLC a Delaware Limited Liability Company
- Veterans Medical Distributors, Inc. a Florida Corporation

Defense Attorney(s):

- Thomas H. Case; Hennelly & Grossfeld LLP; Pacific Palisade, CA for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- Ryan K. Cummings; Hodgson Russ LLP; Buffalo, NY for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- Paul T. Martin; Hennelly & Grossfeld LLP; Marina del Rey, CA for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- Fallon E. Martin; Hodgson Russ LLP; Buffalo, NY for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- Matthew K. Parker; Hodgson Russ LLP; New York,, NY for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- Robert Fluskey; Hodgson Russ LLP; Buffalo, NY for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation
- William Ciszewski III; Hodgson Russ LLP; Buffalo, NY for CTM Biomedical, LLC a Delaware Limited Liability Company, CTM Medical, Inc. a Delaware Corporation

Defendant Expert(s):

- James Donohue; Economics; New York, NY called by: for Thomas H. Case, Ryan K. Cummings, Paul T. Martin, Fallon E. Martin, Matthew K. Parker, Robert Fluskey, William Ciszewski III
- Rouzbeh Taghizadeh Ph.D.; Chemical, Biologic & Nuclear Exposures; Cambridge, called by: for Thomas H. Case, Ryan K. Cummings, Paul T. Martin, Fallon E. Martin, Matthew K. Parker, Robert Fluskey, William Ciszewski III

Facts:

Plaintiff Human Regenerative Technologies LLC (HRT) processes and manufactures medical products that are derived from human placental tissue. Plaintiff Skye Orthobiologics LLC sells various human tissue products, including products manufactured by HRT.

In 2018, Bryan Banman, while still employed as Skye's Senior Vice President of Business Development, started a company called CTM Biomedical LLC, which also sells human tissue products. The plaintiffs alleged that Banman conspired with other individuals and entities to misappropriate plaintiffs' trade secrets, resulting in lost profits for the plaintiffs.

The plaintiffs sued Banman, CTM and related entity CTM Medical Inc., Gardner Rogers and his company, Veterans Medical Distributors Inc., Mike Stumpe, Pablo Seoane and Nathan Boulais. The lawsuit alleged conspiracy under the Racketeer Influenced and Corrupt Organizations Act (RICO), misappropriation of trade secrets, breach of contract, breach of fiduciary duty, breach of duty of loyalty, tortious interference with a contract and tortious interference with prospective economic advantage.

Rogers and Veterans Medical Distributors were dismissed prior to trial. The case proceeded against the remaining defendants.

Plaintiffs require employees, including consultants, to execute confidentiality agreements and/or nondisclosure agreements as a condition of their employment relationship. Plaintiffs alleged that Banman and other employees breached these agreements. They also alleged the defendants conspired with Banman to acquire, disclose and/or use plaintiffs' confidential information and trade secrets to interfere with plaintiffs' legitimate business interests, valid contracts and prospective economic advantages.

The defendants denied all of the allegations. Banman maintained that various agreements into which he entered with the plaintiffs were unenforceable as a matter of law.

Injury:

Plaintiffs alleged they suffered a loss of more than $36 million.

The defense disputed the amount of damages sought.

Result: The jury found that Banman breached the HRT consulting agreement, resulting in lost profits of $7,298,949; Banman breached the Skye employment agreement, resulting in lost profits of $7,298,949; Banman breached the Skye confidentiality agreement, resulting in lost profits of $7,298,949, Banman breached his fiduciary duty to Skye, resulting in lost profits of $7,298,949 and punitive damages of $12,780,000; and Banman breached his duty of loyalty as an officer of Skye, resulting in lost profits of $7,298,949 and punitive damages of $12,780,000, for a total of $62,054,745. However, the jury found Skye failed to prove the existence of a RICO enterprise and also found no liability with regard to Stumpe, Seoane and Boulais.

See Post-Trial section for post-trial rulings on the jury's verdict.

Human Regenerative Technologies LLC

$ 7,298,949 Lost Profits

$ 7,298,949 Plaintiff's Total Award

Skye Orthobiologics LLC

$ 25,560,000 Punitive Damages

$ 29,195,796 Lost Profits

$ 54,755,796 Plaintiff's Total Award

Trial Information:

Judge: Pedro V. Castillo

Trial Length: 7 days

Trial Deliberations: 4 hours

Post Trial:	Post-trial, the court ruled that the jury's finding of a breach of Skye's confidentiality agreement was unsupported by the evidence and not consistent with the plain language of the contract. As a result, the judge dismissed this claim as a matter of law, thereby vacating the jury's award on that claim. The court further found there was insufficient evidence of Banman's financial condition—either his net worth or his ability to pay—to support a punitive damages award. A new trial was ordered on the issue of punitives.
Editor's Comment:	This report is based on information that was provided by plaintiffs' and defense counsel. Additional information was gleaned from court documents.
Writer	Jason Cohen

Plaintiffs: Speeding vehicles caused deadly collision

Type: Verdict-Plaintiff

Amount: $61,768,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, CA

Injury Type(s):
- *head* - concussion
- *brain* - traumatic brain injury
- *other* - death; multiple trauma
- *face/nose* - fracture, nose
- *mental/psychological* - emotional distress

Case Type:
- *Wrongful Death*
- *Motor Vehicle* - Passenger; Red Light; Multiple Vehicle

Case Name: Julie A. Esphorst and Jesse Franklin Esphorst v. Darryl Leander Hicks Jr., California Department of Transportation, County of Los Angeles, Tung Ming, Shawnan, State of California and City of Torrance, No. BC700634

Date: December 12, 2023

Plaintiff(s):
- Julie A. Esphorst, (Female, 51 Years)
- Jesse Franklin Esphorst, (Male, 53 Years)
- Estate of Jesse Eric Esphorst, (Male, 16 Years)

Plaintiff Attorney(s):
- Lawrence D. Marks; Mardirossian Akaragian LLP; Los Angeles CA for Estate of Jesse Eric Esphorst,, Jesse Franklin Esphorst
- Robert R. Clayton; Taylor & Ring LLP; Los Angeles CA for Estate of Jesse Eric Esphorst,, Julie A. Esphorst

Defendant(s):

- Shawnan
- Tung Ming
- City of Torrance
- State of California
- County of Los Angeles
- Darryl Leander Hicks Jr.
- California Department of Transportation

Defense Attorney(s):

- Anthony T. Case; Case Harvey Fedor; San Diego, CA for Darryl Leander Hicks Jr.
- Allison L. Grandy; Cullins & Grandy LLP; Laguna Hills, CA for Tung Ming

Facts:

On March 7, 2017, plaintiffs' decedent and son, Jesse Eric Esphorst, 16, a high school student, was a front seat passenger in a minivan driven by his father, plaintiff Jesse Franklin Esphorst, which was traveling in Torrance. Subsequently, their vehicle was struck by two vehicles that were involved in a chase, one operated by Darryl Hicks Jr., which struck their vehicle first, and the other operated by Tung Ming, at the intersection of Crenshaw Boulevard and Crest Road.

Prior to this collision, Ming reportedly witnessed Hicks Jr. make an illegal U-turn at the intersection of Crenshaw Boulevard and Crest Road, was allegedly angered by this, and attempted to speed around Hicks Jr. A minor collision occurred between the two vehicles. Hicks Jr. then fled and Ming followed him while calling 911. The 911 operator asked Ming for the fleeing vehicle's license plate number.

The vehicles driven by Hicks Jr. and Ming reached speeds of nearly 120 mph before colliding with the Esphorsts' minivan.

Ming and Hicks Jr. were each convicted of felony vehicular manslaughter and reckless driving. Hicks Jr. was also convicted of felony hit and run and driving on a suspended license. Hicks Jr. received an 11-year prison sentence, while Ming was sentenced to more than two years. Jesse Franklin Esphorst suffered injuries to his head and nose, while his son, Jesse, ultimately died later that night.

Plaintiffs, Jesse's mother, Julie Esphorst and Jesse Franklin Esphorst sued Hicks Jr., the California Department of Transportation, the county of Los Angeles, Ming, Shawnan, the state of California and the city of Torrance.

Plaintiffs alleged Hicks Jr. and Ming were negligent in the operation of their vehicles and that the county was negligent in the handling of the 911 call. All other defendants were dismissed as having no responsibility for the intersection or the incident.

Without admitting liability, the county settled out of the case with the plaintiffs for $6.5 million. The matter proceeded to trial against Hicks Jr. and Ming. As both were criminally convicted of vehicular manslaughter, by law, liability was established against them and comparative fault remained the liability issue, with each defendant blaming the other for the incident.

Plaintiffs' counsel argued that the incident began as a result of road rage by Ming and that it continued due to the recklessness of both drivers. Plaintiffs' counsel also argued that while both defendants ran a red light and caused the incident, it was the head-on collision between Ming's vehicle and the Esphorst's minivan that caused the most significant injuries and damages.

Defense counsel for Hicks Jr. argued that the incident was primarily Ming's fault. Specifically, counsel for Hicks Jr. contended that the accident was primarily due to Ming's road rage.

Ming was served with a notice to appear at trial, but he failed to appear. After days of pre-trial motions and the completion of jury selection, the court ordered that the case against Ming would proceed as "uncontested" for his failure to appear at trial. As a result, it was ordered that Ming's attorneys could not present evidence or question witnesses, but they could remain present during the trial. Plaintiffs' counsel noted that they elected not to do so. Defense counsel for Ming contended that the jury did not hear any evidence of the county's culpability, and that Ming was the victim of a hit and run, which was borne out in the criminal trial, and Ming was following the instructions of the 911 operator as he followed Hicks Jr.

Defense counsel for Ming noted the disparity in the criminal sentences that counsel claims highlights some of this.

Plaintiffs' counsel countered by pointing out that the civil jury heard evidence about Ming's culpability that the criminal jury did not. Plaintiffs' counsel also contended that the criminal sentencing difference had more to do with Hicks Jr.'s post-incident failure to remain at the scene and the fact that he was driving on a suspended license, which had little to do with the cause of the incident.

Injury:

Jesse was taken to a hospital by ambulance and died at the hospital. Plaintiffs, his parents, Julie Esphorst and Jesse Franklin Esphorst, sought recovery for wrongful death damages for the loss of their son.

Jesse Franklin Esphorst sustained a mild concussion and a fractured nose. He did not require any surgical intervention and there was no expert testimony on any future medical expenses.

Both parents sought recovery for wrongful death damages for the loss of their son, as well as punitive damages against each Hicks Jr. and Ming for their alleged conduct.

Result: The jury awarded Julie Esphorst $23.25 million for the loss of her son and $36.5 million to Jesse Franklin Esphorst for the loss of his son and his personal injuries. The jury apportioned 95 percent fault to Ming and 5 percent fault to Hicks Jr. The jury found Ming responsible for $2 million in punitive damages and Hicks Jr. responsible for $18,000 in punitive damages. The Esphorsts' total award was $61,768,000.

Julie Esphorst

$ 7,000,000 Past Non-economic Damages for loss of her son, Jesse Jr.

$ 16,250,000 Future Non-economic Damages for loss of her son, Jesse Jr.

$ 23,250,000 Plaintiff's Total Award

Jesse Esphorst

$ 10,000,000 Future Non-economic Damages for his personal injuries

$ 7,000,000 Past Non-economic Damages for loss of his son, Jesse Jr.

$ 6,000,000 Past Non-economic Damages for his personal injuries

$ 13,500,000 Future Non-economic Damages for loss of his son, Jesse Jr.

$ 36,500,000 Plaintiff's Total Award

Estate of Jesse Esphorst

Trial Information:

Judge: Ronald F. Frank

Trial Length: 10 days

Trial Deliberations:	4 hours
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel and defense counsel for Hicks and Ming. Remaining defense counsel were not asked to contribute.
Writer	Priya Idiculla

Defendants willfully infringed on medical device patents: lawsuit

Type: Verdict-Plaintiff

Amount: $59,469,384

State: Florida

Venue: Federal

Court: U.S. District Court, Middle District of Florida, Jacksonville, FL

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: DePuy Synthes Products Inc. and DePuy Synthes Sales Inc. v. Veterinary Orthopedic Implants Inc., No. 3:18-cv-01342-HES-PDB

Date: January 13, 2023

Plaintiff(s):
- DePuy Synthes Sales Inc. (, 0 Years)
- DePuy Synthes Products Inc. (, 0 Years)

Plaintiff Attorney(s):
- Jason G. Sheasby; Irell & Manella LLP; Los Angeles CA for DePuy Synthes Products Inc., DePuy Synthes Sales Inc.
- Lisa S. Glasser; Irell & Manella LLP; Los Angeles CA for DePuy Synthes Products Inc., DePuy Synthes Sales Inc.
- Stephen M. Payne; Irell & Manella LLP; Newport Beach CA for DePuy Synthes Products Inc., DePuy Synthes Sales Inc.
- Andrew Krause; Irell & Manella LLP; Los Angeles CA for DePuy Synthes Products Inc., DePuy Synthes Sales Inc.
- R. Troy Smith; GrayRobinson, P.A.; Jacksonville FL for DePuy Synthes Products Inc., DePuy Synthes Sales Inc.

Plaintiff Expert (s):
- Ken Gall Ph.D.; Materials Science; Durham, NC called by: Jason G. Sheasby, Lisa S. Glasser, Stephen M. Payne, Andrew Krause, R. Troy Smith
- Roy Weinstein; Patent Damages; Long Beach, CA called by: Jason G. Sheasby, Lisa S. Glasser, Stephen M. Payne, Andrew Krause, R. Troy Smith
- Michael Kowaleski D.V.M.; Veterinary Medicine; North Grafton, MA called by: Jason G. Sheasby, Lisa S. Glasser, Stephen M. Payne, Andrew Krause, R. Troy Smith

Defendant(s):

- Fidelio Capital AB
- Syntec Scientific Corp.
- Veterinary Orthopedic Implants Inc.

Defense Attorney(s):

- J. Michael Jakes; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Washington, DC for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Cindy A. Laquidara; Akerman LLP; Jacksonville, FL for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Benjamin A. Saidman; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Atlanta, GA for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Kathleen A. Daley; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Washington, DC for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Jason L. Romrell; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Washington, DC for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Sonja W. Sahlsten; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Washington, DC for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Adam C. Remillard; Akerman LLP; Jacksonville, FL for Veterinary Orthopedic Implants Inc., Fidelio Capital AB
- Jency J. Mathew; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Reston, VA for Veterinary Orthopedic Implants Inc., Fidelio Capital AB

Defendant Expert(s):

- Troy D. Drewry M.S.B.E.; Medical Devices; Memphis, TN called by: for J. Michael Jakes, Cindy A. Laquidara, Benjamin A. Saidman, Kathleen A. Daley, Jason L. Romrell, Sonja W. Sahlsten, Adam C. Remillard, Jency J. Mathew
- Jeffrey N. Peck D.V.M.; Veterinary Medicine; Maitland, FL called by: for J. Michael Jakes, Cindy A. Laquidara, Benjamin A. Saidman, Kathleen A. Daley, Jason L. Romrell, Sonja W. Sahlsten, Adam C. Remillard, Jency J. Mathew
- Michele Riley; Patent Damages; Washington, DC called by: for J. Michael Jakes, Cindy A. Laquidara, Benjamin A. Saidman, Kathleen A. Daley, Jason L. Romrell, Sonja W. Sahlsten, Adam C. Remillard, Jency J. Mathew

Facts:

In 2013, plaintiffs DePuy Synthes Products and DePuy Synthes Sales formally notified Veterinary Orthopedic Implants that it had allegedly violated the plaintiffs' patent. Earlier that year, the plaintiffs had received a patent for a tibial plateau leveling osteotomy plate, or more commonly referred to as a TPLO plate. TPLO plates are used to secure bone segments during veterinary surgery. The plaintiffs received a related patent in June 2021. The patents were numbered 8,523,921 and 11,026,728, respectively.

Fidelio Capital AB acquired VOI in 2020. The plaintiffs sued both companies. DePuy claimed that VOI and Fidelio sold osteotomy plates that infringed the plaintiffs' patents.

During the course of litigation, the patents were referred to as the '921 patent and the '728 patent. The lawsuit specifically alleged that the defendants infringed claims 1, 12 and 20 of the '921 patent and claim 1 of the '728 patent.

Plaintiffs' material science expert agreed that the defendants' products infringed on the subject claims. Additionally, plaintiffs' counsel argued that the defendants' infringement

was willful, and the defendants intentionally copied the plaintiffs' patented designs, which they then attempted to hide from the plaintiffs.

Plaintiffs' counsel used the defendants' own documents to support this argument. Specifically, plaintiffs' counsel presented emails in which VOI allegedly asked its manufacturer to create plates identical to the DePuy plates. Plaintiffs' counsel additionally pointed to testimony from VOI's corporate representative, who supposedly admitted that he knew about the '921 patent in 2013. A Fidelio director also reportedly admitted that he knew about the alleged infringement before his company purchased VOI.

Plaintiffs' counsel also noted testimony from a former VOI employee who alleged there was an "understanding" within the company that VOI's TPLO plates were copies of the DePuy Synthes plates. The former employee went on to claim that the products were even marketed as copies and that VOI had attempted to obscure this fact by concealing the plates at trade shows and leaving them out of public catalogs.

Defense counsel contended that the defendants did not infringe on the aforementioned claims, noting that claim 1 of the '728 patent describes, "the screw hole path of the superior screw hole being angled no more than 90 degrees relative to the base plane," but that this angle should be measured above the plate. Defense counsel maintained that, when the angle of VOI's plate is measured in this fashion, it does not infringe on the patent.

Meanwhile, claims 1 and 20 of the '921 patent mention a "bone-contacting surface of the proximal portion being pre-configured and dimensioned to conform to a tibial bone segment and having a contour formed as an arc of a cylinder." Defense counsel argued that VOI's plates included cylinders that were only 0.2 millimeters and therefore did not constitute an "arc of a cylinder." Defense counsel concluded that VOI's plates did not literally infringe on the patent.

Claim 12 of the '921 states "screw hole paths for the at least three screw holes are predetermined and angled so as to direct screws … away from edges of the tibia." The defense maintained that VOI's plates did not violate this claim because they contain at least one screw hole path that directs screws toward the outer perimeter of the tibia so they can exit the bone.

The defense also argued that the subject claims were obvious and therefore invalid. Defense counsel added that claim 1 of the '728 patent lacked sufficient written description support, and that claim 1 of the '728 patent and claims 1 and 20 of the '921 patent were indefinite.

Defense counsel additionally maintained that any infringement was not willful, noting that some of the internal emails cited by plaintiffs' counsel were written before the '921 patent was issued. Defense counsel further maintained that the plaintiffs' evidence of copying pertained to plates that VOI removed from the market in 2019.

Injury: The plaintiffs sought recovery of $59,469,384, which consisted of $42,643,879 in reasonable royalties and $16,825,505 in lost profits.

Defense counsel disputed the calculations of the plaintiffs' expert. The defense noted that the plaintiffs' expert used the costs and expenses of DePuy as a whole as part of his reasonable royalty analysis. The defense argued that the expert should have only used the costs and expenses of DePuy's veterinary division. The defense further maintained that DePuy did not prove it had the manufacturing and marketing capability to exploit the demand for its patented products.

Result: The jury determined that the plaintiffs proved VOI infringed on the three claims in the '921 patent and claim 1 in the '728 patent. The jury additionally concluded that Fidelio was liable for VOI's infringement and that none of the claims at issue were invalid. It further concluded that the defendants' infringement was willful. The plaintiffs were awarded $59,469,384.

DePuy Synthes Sales Inc.

DePuy Synthes Products Inc.

Trial Information:

Judge: Harvey E. Schlesinger

Trial Length: 6 days

Trial Deliberations: 1.5 hours

Post Trial: The parties agreed to a post-trial settlement of the case.

Editor's Comment: This report is based on information that was gleaned from court documents. Plaintiffs' and defense counsel did not respond to the reporter's phone calls.

Writer Melissa Siegel

Mismanaged labor, delivery caused injuries to newborn: suit

Type: Verdict-Plaintiff

Amount: $55,500,000

State: Illinois

Venue: Cook County

Court: Cook County Circuit Court, IL

Injury Type(s):
- *arm*
- *leg*
- *brain* - brain damage; cerebral palsy; encephalopathy; brain abnormalities
- *other* - ischemia; physical therapy; seizure disorder; scar and/or disfigurement
- *cardiac* - heart; tachycardia
- *sensory/speech* - speech/language, impairment of
- *arterial/vascular* - acidosis
- *mental/psychological* - emotional distress; cognition, impairment
- *pulmonary/respiratory* - hypoxia; respiratory distress

Case Type:
- *Medical Malpractice* - OB-GYN; Childbirth; Birth Injury; Failure to Treat; Failure to Detect; Failure to Monitor; Failure to Diagnose

Case Name: Devon Bank, as the Plenary Guardian of the Estate of Shamond Butler, a disabled person, and Shannette Slater, Individually v. Monique Schoenhage, M.D. f/k/a Monique Brown, M.D., Michelle Kominiarek, M.D., Kieya Charon King, M.D., Wanda Williams, R.N., Jennifer McGee, R.N. f/k/a Jennifer Chaison, R.N., The Board of Trustees of the University of Illinois d/b/a The University of Illinois Hospital and Health Sciences System, No. 2022L008261

Date: October 11, 2023

Plaintiff(s):
- Devon Bank, (, 0 Years)
- Shannette Slater, (Female, 24 Years)
- Estate of Shamond Butler, (Male, 1 Years)

Plaintiff Attorney(s):
- Matt Patterson; Beam Legal Team; Chicago IL for Devon Bank,, Estate of Shamond Butler,, Shannette Slater

Plaintiff Expert (s):

- Alex C. Willingham M.D.; Physical Medicine; San Antonio, TX called by: Matt Patterson
- Martin Gubernick M.D.; Obstetrics; New York, NY called by: Matt Patterson
- Jeffrey L. Soffer M.D.; OB-GYN; Chatham, NJ called by: Matt Patterson
- Michael B. Lloyd M.D.; Pediatric Neurology; Salt Lake City, UT called by: Matt Patterson
- Michael H. Thomson Ph.D.; Economics; Bloomfield Hills, MI called by: Matt Patterson
- Stephen L. Nelson M.D.; Pediatric Neurology; New Orleans, LA called by: Matt Patterson

Defendant(s):

- Jennifer McGee, R.N.
- Wanda Williams, R.N.
- Kieya Charon King, M.D.
- Monique Schoenhage, M.D.
- Michelle Kominiarek, M.D.
- The Board of Trustees of the University of Illinois

Defense Attorney(s):

- Sherri M. Arrigo; Donohue Brown Mathewson & Smyth LLC; Chicago, IL for Monique Schoenhage, M.D., Michelle Kominiarek, M.D.
- Timothy L. Hogan; Donohue Brown Mathewson & Smyth LLC; Chicago, IL for Monique Schoenhage, M.D., Michelle Kominiarek, M.D.

Defendant Expert(s):

- Jay P. Goldsmith M.D.; Neonatology; New Orleans, LA called by: for Sherri M. Arrigo, Timothy L. Hogan
- Carl P. Weiner M.D.; Fetal Medicine; Phoenix, AZ called by: for Sherri M. Arrigo, Timothy L. Hogan
- John Scarborough Ph.D.; Economics; Ridgefield, CT called by: for Sherri M. Arrigo, Timothy L. Hogan
- Rebecca Baergen M.D.; Placental Pathology; New York, NY called by: for Sherri M. Arrigo, Timothy L. Hogan
- Richard T. Katz M.D.; Life Care Planning; Saint Louis, MO called by: for Sherri M. Arrigo, Timothy L. Hogan
- Richard Towbin M.D.; Neuroradiology; Phoenix, AZ called by: for Sherri M. Arrigo, Timothy L. Hogan
- Courtney Wusthoff M.D.; Pediatric Neurology; Palo Alto, CA called by: for Sherri M. Arrigo, Timothy L. Hogan
- Karoline S. Puder M.D.; Fetal Medicine; Royal Oak, MI called by: for Sherri M. Arrigo, Timothy L. Hogan

Facts:

On April 13, 2003, at around 4:53 a.m., plaintiff Shamond Butler was born depressed with metabolic acidosis at a hospital in Chicago. He was later diagnosed with cerebral palsy. Plaintiff Shannette Slater, 24, the baby's mother, alleged the physicians overseeing the birth, Drs. Monique Schoenhage and Michelle Kominiarek, were negligent in managing the labor and delivery.

Slater sued Schoenhage and Kominiarek. She alleged the doctors failed in their standard of care toward Shamond and further alleged that their failure constituted medical malpractice. Slater identified other parties originally named as defendants in the suit. The

claims against those parties were either dismissed or concluded via dispositions involving undisclosed terms prior to trial.

On April 12, 2013, at approximately 4 p.m., Slater, 39 weeks pregnant, was admitted to the hospital after she suffered spontaneous rupture of membranes. At the time, the baby's heartrate was normal. At 6:15, Slater was started on Pitocin to induce labor, and the drug continued to be regularly administered for the next nine hours.

Slater's counsel alleged that by 7:30 p.m., the fetal monitoring demonstrated increased uterine activity and tachycardia -- a potential marker for fetal hypoxia. However, counsel argued, the labor and delivery team continued to steadily increase the Pitocin in the ensuing hours, all while the baby became more and more tachycardic.

On the morning of April 13, preoperative diagnoses of the baby consisted of fetal distress and non-reassuring fetal well-being. At 4:53 a.m., Shamond was delivered via emergency Cesarean section. He had significantly low Apgar scores and required artificial ventilation.

The plaintiffs' experts in obstetrics and obstetrics-gynecology testified that Schoenhage and Kominiarek deviated from the standard of care on multiple fronts. According to the experts, Schoenhage was an attending obstetrician-gynecologist who had not been board certified, and Kominiarek was a senior resident obstetrician-gynecologist. Per the experts, from midnight to the time of Shamond's delivery, the two doctors had overseen five other childbirths, which prevented them from properly monitoring Slater and acting accordingly to fetal distress.

The plaintiffs' experts testified that the defendants were negligent in having Pitocin continuously administered when it was clearly causing fetal distress. Additionally, according to the experts, during Slater's labor, chorioamnionitis, or intraamniotic infection, developed in Slater's placenta, which further constricted oxygen to the baby. The experts concluded that timely treatment of the infection and a timely Cesarean section could have prevented Shamond's brain damage.

The defense maintained that Schoenhage and Kominiarek's treatment of the plaintiffs met the standard of care. The defense's experts in fetal medicine testified that the administering of Pitocin was appropriate and the uterine activity was not as excessive as the plaintiffs alleged, nor was it sufficient to stop the Pitocin. The experts opined that the Cesarean section was performed at the necessary time and the placental infection did not occur during labor, but before Slater was admitted to the hospital.

Injury:

Following his birth, Shamond suffered respiratory distress and was admitted to the neonatal intensive care unit, where he remained for eight days. He was ultimately diagnosed with a hypoxic-ischemic brain injury, seizure disorder, encephalopathy and cerebral palsy.

Following his discharge from the neonatal intensive care unit, Shamond continued to suffer seizures. He was later discharged home and was heavily monitored in the ensuing months. The child eventually began treating with occupational, speech and physical therapies, all of which were ongoing at the time of trial.

The plaintiffs' experts in neurology and pediatric neurology discussed how, over the course of nine hours of Shamond's delivery, the excessive use of Pitocin deprived his brain of oxygen, which resulted in irrevocable brain damage and cognitive deficits.

The plaintiffs' expert in physical medicine testified that Shamond had the cognitive capacity of a 2- or 3-year-old. The expert stated that Shamond is permanently and severely disabled and requires lifelong attendant care, medical services and therapies.

A day-in-the-life video showed Shamond at 18 years old completely dependent on his parents in bathing, personal hygiene and preparing his food. He spends most of his time on his iPad, which is his safety blanket. Shamond's parents discussed how Shamond's father became a stay-at-home dad while the mother worked. They further testified about their fears of not being able to care for their son as they get older.

The plaintiffs sought to recover $22 million in future medical costs and $3.6 million in future lost earnings, plus damages for past medical costs, disfigurement, past and future pain and suffering, loss of a normal life and emotional distress.

In its closing, the plaintiffs' counsel asked the jury for $55.2 million in damages.

The defense's experts in neonatology and pathology testified that the placental infection did not occur intra-labor, but sometime before Slater's labor and delivery. The experts concluded that earlier detection and treatment of the infection would not have changed the outcome of Shamond's condition.

The defense's neurology expert attributed Shamond's brain damage and cognitive impairments to an in utero infection that occurred prior to Slater's admission to the hospital on April 13, 2003.

The defense's expert in physical medicine testified that the future medical care proposed by the plaintiffs was excessive and speculative, and that Shamond only required approximately $3 million in future medical costs.

Result:

The jury determined that Shamond's damages totaled $55.5 million.

Shannette Slater

Estate of Shamond Butler

$ 1,000,000 Past Medical Cost

$ 22,000,000 Future Medical Cost

$ 3,500,000 Future Lost Earnings

$ 5,000,000 Future Pain Suffering

$ 2,000,000 Past Pain Suffering

$ 2,000,000 past emotional distress

$ 5,000,000 disfigurement

$ 7,000,000 future loss of a normal life

$ 5,000,000 future emotional distress

$ 3,000,000 past loss of a normal life

$ 55,500,000 Plaintiff's Total Award

Devon Bank

Trial Information:

Judge: Janet Adams-Brosnahan

Trial Length:	3 weeks
Trial Deliberations:	0
Jury Vote:	12-0
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Insurers breached contract by refusing to cover losses: plaintiff

Type: Verdict-Plaintiff

Amount: $54,235,187

State: New York

Venue: Federal

Court: U.S. District Court, Southern District, NY

Case Type:
- *Insurance* - Coverage; Denial of Claim
- *Contracts* - Breach of Contract

Case Name: Citgo Petroleum Corporation v. Ascot Underwriting Limited (for and on behalf of the members of Lloyd's Syndicate 1414), Pioneer Underwriting Limited (for and on behalf of the members of the Consortium No. 9146), MS Amlin Underwriting Limited (for and on behalf of the members of Lloyd's Syndicate 2001), Travelers Syndicate Management Limited (for and on behalf of the members of Lloyd's Syndicate 5000), Brit Syndicate Limited (for and on behalf of the members of Lloyd's Syndicate 2987), Sompo International Insurance (for and on behalf of the members of Lloyd's Syndicate 5151), Chaucer Syndicates Limited (for and on behalf of the members of Lloyd's Syndicate 1084), Markel Syndicate Management Limited (for and on behalf of the members of Lloyd's Syndicate 3000), Neon Underwriting Limited (for and on behalf of the members of Lloyd's Syndicate 2468), and StarStone Insurance SE, No. 1:21-cv-00389-GHW

Date: December 18, 2023

Plaintiff(s):
- Citgo Petroleum Corp. (, 0 Years)

Plaintiff Attorney(s):

- David F. Klein; Pillsbury Winthrop Shaw Pittman LLP; Washington DC for Citgo Petroleum Corp.
- Mark J. Plumer; Pillsbury Winthrop Shaw Pittman LLP; Washington DC for Citgo Petroleum Corp.
- Richard P. Donoghue; Pillsbury Winthrop Shaw Pittman LLP; New York NY for Citgo Petroleum Corp.
- John Chamberlain; Pillsbury Winthrop Shaw Pittman LLP; Washington DC for Citgo Petroleum Corp.
- Jeffrey W. Mikoni; Pillsbury Winthrop Shaw Pittman LLP; Washington DC for Citgo Petroleum Corp.

Plaintiff Expert (s):

- Carlos J. Sarmiento Sosa; Cargo/Shipping Industry; Miranda Venezuela, called by: David F. Klein, Mark J. Plumer, Richard P. Donoghue, John Chamberlain, Jeffrey W. Mikoni

Defendant(s):

- StarStone Insurance SE
- Brit Syndicate Limited
- Ascot Underwriting Limited
- Neon Underwriting Limited
- Chaucer Syndicates Limited
- MS Amlin Underwriting Limited
- Pioneer Underwriting Limited
- Sompo International Insurance
- Markel Syndicate Management Limited
- Travelers Syndicate Management Limited

Defense Attorney(s):

- William M. Cooney; Clyde & Co LLP; New York, NY for Ascot Underwriting Limited, Pioneer Underwriting Limited, MS Amlin Underwriting Limited, Travelers Syndicate Management Limited, Brit Syndicate Limited, Sompo International Insurance, Chaucer Syndicates Limited, Markel Syndicate Management Limited, Neon Underwriting Limited, StarStone Insurance SE
- John M. Woods; Clyde & Co LLP; New York, NY for Ascot Underwriting Limited, Pioneer Underwriting Limited, MS Amlin Underwriting Limited, Travelers Syndicate Management Limited, Brit Syndicate Limited, Sompo International Insurance, Chaucer Syndicates Limited, Markel Syndicate Management Limited, Neon Underwriting Limited, StarStone Insurance SE
- Thomas P. Myers; Clyde & Co LLP; New York, NY for Ascot Underwriting Limited, Pioneer Underwriting Limited, MS Amlin Underwriting Limited, Travelers Syndicate Management Limited, Brit Syndicate Limited, Sompo International Insurance, Chaucer Syndicates Limited, Markel Syndicate Management Limited, Neon Underwriting Limited, StarStone Insurance SE

Facts:

On Jan. 25, 2019, plaintiff Citgo Petroleum Corp. learned that loyalists of Venezuelan president Nicolás Maduro seized its chartered tanker ship of crude oil.

At the time of the Citgo ship's seizure, the U.S. government had announced that it was recognizing Juan Guaido as Venezuela's legitimate leader, which was in direct opposition to Maduro. Additionally, the U.S. government imposed restrictions on the country's state oil company, Petróleos de Venezuela S.A., or PDVSA. This prompted armed forces loyal to Maduro to seize the Citgo tanker ship and commandeer it to a terminal controlled by the PDVSA, where the oil was discharged.

Citgo's insurers -- a group of Lloyd's of London syndicates -- refused to provide coverage for Citgo's losses. As a result, Citgo claimed that the insurers' refusal to provide coverage violated a provision of its policy, which covered losses from seizures arising from insurrections.

Citgo sued its insurers: Ascot Underwriting Limited, Pioneer Underwriting Limited, MS Amlin Underwriting Limited, Travelers Syndicate Management Limited, Brit Syndicate Limited, Sompo International Insurance, Chaucer Syndicates Limited, Markel Syndicate Management Limited, Neon Underwriting Limited and StarStone Insurance SE. Citgo alleged that the defendants' actions constituted a breach of contract.

Citgo's counsel argued that a section of the insurance policy, called the Institute War Clauses, covers, among other things, losses caused by seizures "arising from" an "insurrection." Counsel asserted that the cargo was seized, since persons acting on behalf of the Maduro regime compelled the tanker ship to yield possession of the cargo.

Defense counsel maintained that the insurance policy did not cover losses caused by "political turmoil." According to the defense, Citgo points only to the war risk coverage provided by the Institute War Clauses -- and specifically, to "insurrection" -- as the only policy provision that could trigger coverage. However, defense counsel argued that there was no evidence that Citgo sustained a loss caused by an insurrection. Counsel contended that the Citgo tanker ship was not anywhere near violence of any kind, let alone violence, as stated under the insurance policy, "for the specific purpose of overthrowing the constituted government and seizing its powers." Instead, defense counsel attributed Citgo's complaints to a commercial dispute it had with its corporate parent, PDVSA, specifically regarding Citgo's non-payment for the cargo that PDVSA had supplied to Citgo. According to the defense, the dispute was resolved not by violence of any kind, but only by an order of a Venezuelan court for "restitution" of the cargo to PDVSA. Counsel maintained that the order was peacefully served on the Citgo tanker ship, and indisputably caused the vessel to sail to a domestic port for the peaceful discharge of the cargo to PDVSA's shore tanks.

Injury: Citgo sought recovery of $60,866,320.62 in damages related to the defendants' alleged breach of contract.

Defense counsel argued that Citgo was not entitled to any damages since the insurers' denial of Citgo's claim was just and reasonable.

Result: The jury found that the defendants breached the insurance contract under the Institute War Clauses provision and that Citgo faced an imminent or actual loss that would have been within the coverage of the Institute War Clauses. According to the jury, certain costs and expenses Citgo incurred were to protect the cargo and prevent the loss.

The jury also found that the voyage of the Citgo tanker ship was frustrated, interrupted or terminated, resulting in the cargo not being delivered to its destination. Additionally, the jury found that Citgo incurred additional charges, expenses or legal fees incidental to the release, storage and/or onward shipment of the cargo. Thus, the jury concluded that the defendants did not require Citgo to hold onto "any property" for the purpose of storing or transporting the cargo.

The jury determined that Citgo's damages totaled $54,235,187.24.

Citgo Petroleum Corp.

Trial Information:

Judge: Gregory H. Woods

Trial Length: 5 days

Trial Deliberations: 0

Editor's Comment: This report is based on information that was gleaned from court documents. Plaintiff's counsel declined to contribute and defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Plaintiff: Tree trimming near power lines led to severe electric shock

Type: Verdict-Plaintiff

Amount: $53,965,000

State: Texas

Venue: Dallas County

Court: Dallas County District Court, 191st, TX

Injury Type(s):
- *arm*
- *back* - lower back
- *head* - ear
- *neck*
- *burns* - third degree; second degree
- *other* - thigh; laryngoscopy; physical therapy
- *shoulder*
- *face/nose* - face
- *surgeries/treatment* - skin graft; debridement; tracheostomy/tracheotomy
- *mental/psychological* - anxiety; depression
- *paralysis/quadriplegia* - quadriplegia

Case Type:
- *Real Property* - Trespass
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance
- *Consumer Protection* - Deceptive Trade Practices Act

Case Name: James Stacey Taylor v. Oncor Electric Delivery Company, Inc, No. DC-16-01615

Date: April 18, 2023

Plaintiff(s):
- James Stacey Taylor, (Male, 42 Years)

Plaintiff Attorney(s):
- Sean Breen; Howry Breen & Herman LLP; Austin TX for James Stacey Taylor
- Brian P. Lauten; Brian Lauten, P.C.; Dallas TX for James Stacey Taylor

Plaintiff Expert (s):

- John C. Porter M.D.; Physical Medicine; Scottsdale, AZ called by: Sean Breen, Brian P. Lauten
- John M. Trapani Ph.D.; Economics; New Orleans, LA called by: Sean Breen, Brian P. Lauten
- Ruth B. Rimmer Ph.D.; Life Care Planning; Mesa, AZ called by: Sean Breen, Brian P. Lauten
- David Feltoon Ph.D.; Psychology/Counseling; Austin, TX called by: Sean Breen, Brian P. Lauten
- Graham F. Lucas III, M.D.; Family Medicine; Graham, TX called by: Sean Breen, Brian P. Lauten
- Morris J. Mach CSP; Electrical Power; Bastrop, TX called by: Sean Breen, Brian P. Lauten

Defendant(s):

- Oncor Electric Delivery Company Inc.

Defense Attorney(s):

- Thomas F. Lillard; Lillard Wright Szygenda Russell Wise PLLC; Dallas, TX for Oncor Electric Delivery Company Inc.
- Robert K. Wise; Lillard Wright Szygenda Russell Wise PLLC; Dallas, TX for Oncor Electric Delivery Company Inc.
- Andrew J. Szygenda; Lillard Wright Szygenda Russell Wise PLLC; Dallas, TX for Oncor Electric Delivery Company Inc.
- Michael C. Wright; Lillard Wright Szygenda Russell Wise PLLC; Dallas, TX for Oncor Electric Delivery Company Inc.

Defendant Expert(s):

- B. Don Russell Ph.D., P.E.; Electrical; College Station, TX called by: for Thomas F. Lillard, Robert K. Wise, Andrew J. Szygenda, Michael C. Wright
- David B. Rosenfield M.D.; Neurology; Houston, TX called by: for Thomas F. Lillard, Robert K. Wise, Andrew J. Szygenda, Michael C. Wright
- Richard Voyles; Trees; Jacksboro, TX called by: for Thomas F. Lillard, Robert K. Wise, Andrew J. Szygenda, Michael C. Wright

Facts:

On June 27, 2015, plaintiff James Stacey Taylor, 42, a quality assurance inspector at a factory that made crop-dusting aircraft, was using a bucket lift to cut down two hackberry trees at a rental house that he and his brother owned. The trees were encroaching on a high-voltage power line, as well as the service lines to the Taylor house and a neighbor's house. All the lines were owned and controlled by Oncor Electric Delivery Company Inc. While cutting limbs, Taylor came too close to the high-voltage line and suffered a severe electric shock.

Taylor sued Oncor. The lawsuit alleged that Oncor was negligent in failing to trim the trees and in telling the Taylors that doing so was their responsibility; that Oncor was negligent on a theory of premises liability; that Oncor's conduct was unconscionable and violated the Deceptive Trade Practices Act; and that Oncor trespassed by placing the service line to the neighbor's house across the Taylor property.

Taylor or his brother had spoken to Oncor once in April 2015 and three times within about an hour the following month. They told Oncor that the trees were growing into the power

lines. They said they also told Oncor that private tree-trimmers refused to trim the trees because they were too close to the high-voltage line. Oncor responded that trimming the limbs over the service lines was not Oncor's responsibility.

Taylor denied the defense contention that he violated Chapter 752 of the Texas Health and Safety Code by coming within 6 feet of a high-voltage overhead power line and operating a tool within that distance. In the alternative, he maintained that Oncor interfered with his compliance by encouraging noncompliance with the statute.

Plaintiff's counsel argued for 95 percent responsibility on Oncor and 5 percent on Taylor.

Oncor denied negligence, trespass and unconscionability.

Oncor acknowledged telling the Taylors, essentially, that keeping the limbs off the service lines was the property owners' responsibility, although they should hire a professional and not try to do it themselves, and that Oncor would de-energize the service lines for the trimming. What Taylor was doing on June 27, Oncor argued, was not cutting the limbs around the service lines but, rather, removing the trees entirely, including removing limbs that encroached on the high-voltage line. Had Taylor notified Oncor that he intended to do such work or even to hire someone to do it, the company argued, Oncor would have told him unequivocally that, if such work was needed, it would be done by Oncor. Moreover, Oncor argued, its technician who visited the property in response to the calls of April and May 2015 determined that trimming the limbs around the high-voltage line was not necessary.

Oncor further argued that Taylor violated Chapter 752 of the Texas Health and Safety Code by coming within 6 feet of a high-voltage overhead power line and operating a tool within that distance. The defense also noted that Taylor had never used a bucket lift before and did not read the manual or the electrocution warnings on the lift.

Defense counsel argued that Taylor's negligence was the sole proximate cause of the incident. The jury was also instructed on new and independent cause.

Injury:

Taylor sustained electrical burns over 17 percent of his body, including the top of his head, his right ear, right (nondominant) arm, right shoulder, right flank, left thigh and lower back. There were multiple deep second- and third-degree burns. He sustained an incomplete spinal cord injury from C5 to C7 and was rendered an incomplete quadriplegic. He claimed he also suffered from depression and anxiety.

Taylor was unconscious when a ground ambulance arrived. He was taken by helicopter ambulance to a hospital burn center. He spent two weeks at the burn center and 2.5 months undergoing inpatient neurological rehabilitation at another hospital. He had consultations with numerous specialists and underwent courses of physical and occupational therapy.

His surgical procedures included open tracheostomy and direct laryngoscopy; debridements of the scalp and face with wound vacuum placement; left thigh wound excision and closure; scalp and face skin grafting (425 square centimeters); excision of bone from his skull; and inferior vena cava filter placement and removal.

According to his life care plan, he is unable to walk without a walker and can only walk about 200 yards, and he has no sensation in his hands.

He requires 24-hour care and assistance with the activities of daily living. He cannot drive, play the guitar, hunt, fish or restore old cars, all of which he did before.

He went back to work for his employer, but with changed responsibilities and reduced pay. He said he eventually lost his job.

His wife was his full-time caregiver after he was discharged home.

For negligence, Taylor sought $615,000 for past medical expenses; $4.69 million for future medical expenses; $322,000 for past loss of earning capacity; and $1.209 million for future loss of earning capacity. For past and future physical pain and mental anguish, past and future disfigurement and past and future physical impairment, he sought a total of $75 million.

He sought the same elements and amounts of damages for trespass.

He also sought additional damages, for unconscionable conduct committed knowingly and intentionally.

The defense suggested an award of $1.5 million, if the jury reached damages.

Result: The jury found liability on the part of Oncor and determined that Taylor's damages totaled $53,965,000.

Specifically, the jury found general negligence, premises liability and unconscionability as to Oncor and negligence as to Taylor, with comparative responsibility of 75 percent on Oncor and 25 percent on Taylor. The jury determined that Taylor's actual damages for this conduct by Oncor totaled $41,515,000. This amount consisted of $4 million for past physical pain and mental anguish; $10 million for future physical pain and mental anguish; $322,000 for past loss of earning capacity; $1,209,000 for future loss of earning capacity; $2 million for past disfigurement; $1 million for future disfigurement; $8 million for past physical impairment; $10 million for future physical impairment; $615,000 for past medical expenses; and $4,369,000 for future medical expenses.

The jury also found that the unconscionable conduct was committed knowingly, for which the jury awarded additional damages of $3.5 million.

The jury also found trespass by Oncor, but also found that Oncor had a prescriptive easement across Taylor's property for the service line to the neighbor's house.

For trespass, the jury awarded $8,950,000. This amount consisted of $1 million for past physical pain and mental anguish; $1 million for future physical pain and mental anguish; $1.2 million for future loss of earning capacity; $2 million for past disfigurement; $250,000 for future disfigurement; $2 million for past physical impairment; $1 million for future physical impairment; $250,000 for past medical expenses; and $250,000 for future medical expenses.

The jury found that Taylor violated the Texas Health and Safety Code, but that Oncor interfered with his compliance by encouraging his noncompliance. The jury also found that Taylor's noncompliance was excused because he neither knew nor should have known of the occasion for compliance.

James Taylor

Trial Information:

Judge: Gena Slaughter

Trial Length: 0

Trial Deliberations:	0
Post Trial:	The plaintiff's proposed judgment includes actual damages of $31,136,250, which is $41,515,000 reduced by Taylor's 25 percent comparative responsibility. The proposed judgment also includes $3.5 million in additional damages under the DTPA and more than $6.5 million in prejudgment interest. The defense intends to file a motion for JNOV.
Editor's Comment:	This report is based on information that was provided by plaintiff’s and defense counsel.
Writer	John Schneider

Speeding driver caused fatal collision, lawsuit alleged

Type: Verdict-Plaintiff

Amount: $53,728,050

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

Injury Type(s):
- *head*
- *neck* - fracture, cervical
- *chest* - fracture, rib; fracture, sternum
- *other* - death; tongue; abrasions; laceration; multiple trauma
- *cardiac* - heart; ventricle, tear
- *epidermis* - contusion

Case Type:
- *Motor Vehicle* - Truck; Head-On; Speeding; Center Line; Multiple Vehicle; Alcohol Involvement
- *Wrongful Death* - Survival Damages

Case Name: Nancy H. Raik, entitled to appointment as Personal Representative of the Estate of Brian K. Raik, deceased, and on behalf of the Estate and Survivors of Brian K. Raik v. Elie Charles, No. CACE19022367

Date: April 11, 2023

Plaintiff(s):
- Estate of Brian K. Raik, (Male, 64 Years)

Plaintiff Attorney(s):
- Todd R. Falzone; Kelley | Uustal; Fort Lauderdale FL for Estate of Brian K. Raik
- Fan Li; Kelley | Uustal; Fort Lauderdale FL for Estate of Brian K. Raik

Defendant(s):
- Elie Charles
- Charlie Lawn Services Inc

Defense Attorney(s):
- None Reported for Elie Charles, Charlie Lawn Services Inc

Facts:

On Sept. 3, 2019, plaintiff's decedent Brian Raik, 64, a part-time rideshare driver, was operating a sedan westbound on Atlantic Boulevard, near its intersection with Northwest 31st Avenue in Broward County. The road had a speed limit of 45 miles per hour. Elie Charles was operating a pickup truck eastbound on Atlantic Boulevard near the same intersection. The pickup hopped over the median and struck Raik's vehicle head-on. Raik suffered fatal injuries.

Raik's widow, Nancy Raik, acting as the personal representative of her late husband's estate and on behalf of his survivors, sued Charles. The estate alleged that Charles was negligent in the operation of his vehicle. The lawsuit was later amended to include a claim against Charles' employer, Charlie Lawn Services Inc., for vicarious liability.

The estate's counsel alleged that Charles was driving 73 mph prior to the crash. Per the estate's counsel, witnesses told police that Charles had been weaving in and out of traffic prior to the Northwest 31st Avenue intersection. Counsel alleged that Charles stopped for a red light at the intersection, but then continued speeding and driving around cars once the light turned green.

The estate's counsel claimed that the speeding truck had a worn-down back tire. Counsel alleged that the truck skidded on the wet road, causing the truck to jump the median and strike Raik's vehicle. Counsel also claimed that Charles was intoxicated at the time of the crash. According to the estate's counsel, police found three plastic cups and ash in the truck following the impact. Charles also allegedly posted a social media video that showed him smoking marijuana prior to the crash. The estate's counsel alleged that Charles drank alcohol before getting into the truck, as well.

The defendants did not have insurance coverage and their counsel withdrew prior to trial. A default judgment was entered against Charlie Lawn Services. Charles came to the courtroom for trial, but chose not to participate. The trial only addressed damages.

Injury: Raik suffered abrasions and contusions to his head, and bit his tongue during the impact. He also suffered fractures to his neck, ribs and sternum, plus lacerations to the right ventricle and the pericardial sac.

Raik was bleeding from both his nose and mouth at the scene. He was taken by ambulance to a nearby hospital, but was pronounced dead approximately one hour after the crash. His cause of death was multiple blunt force trauma injuries. He left behind his wife and two children: Jennifer and Matthew Raik. The children were both in their 20s at the time of the accident.

The estate sought recovery of $28,049.52 in medical and funeral expenses and lost accumulations. The estate also sought $17.9 million in damages for Nancy Raik's loss of companionship, protection, support and services, and for her pain and suffering. The estate additionally sought damages for Jennifer and Matthew Raik's loss of companionship, instruction, guidance, support and services, and for their pain and suffering. Counsel asked the jury to award $17.9 million in noneconomic damages to each of Brian Raik's children.

Result: The jury awarded the estate $53,728,049.52.

Estate of Brian Raik

$ 17,900,000 noneconomic damages for Jennifer Raik

$ 28,049.52 funeral and medical expenses and lost accumulations

$ 17,900,000 noneconomic damages for Nancy Raik

$ 17,900,000 noneconomic damages for Matthew Raik

$ 53,728,049.52 Plaintiff's Total Award

Trial Information:

Judge: Michael A. Robinson

Trial Length:	1 days
Trial Deliberations:	49 minutes
Jury Vote:	6-0
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents.
Writer	Melissa Siegel

Plaintiff claimed crane should have been used to lift AC unit

Type: Verdict-Plaintiff

Amount: $53,500,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *back* - fracture, back; fracture, T8; fracture, back; fracture, T9; fusion, thoracic; fracture, vertebra; fracture, T8; fracture, vertebra; fracture, T9
- *chest* - fracture, rib
- *other* - physical therapy
- *urological* - incontinence
- *surgeries/treatment* - open reduction
- *paralysis/quadriplegia* - paralysis; paraplegia

Case Type:
- *Construction* - Accidents; Labor Law
- *Slips, Trips & Falls* - Fall from Height

Case Name: Alan Moonsammy v. 656 Warwick Realty, LLC and Mecca Contracting, Inc., No. 521183/2017

Date: April 20, 2023

Plaintiff(s):
- Alan Moonsammy, (Male, 43 Years)

Plaintiff Attorney(s):
- Jeffrey A. Block; Block O'Toole & Murphy, LLP; New York NY for Alan Moonsammy
- S. Joseph Donahue; Block O'Toole & Murphy, LLP; New York NY for Alan Moonsammy

Plaintiff Expert (s):
- Barry C. Root M.D.; Physical Medicine; Roslyn Heights, NY called by: Jeffrey A. Block, S. Joseph Donahue
- Debra S. Dwyer Ph.D.; Economics; East Setauket, NY called by: Jeffrey A. Block, S. Joseph Donahue

Defendant(s):

- Mecca Contracting, Inc.
- 656 Warwick Realty, LLC
- RK Cooling & Heating System, LLC

Defense Attorney(s):

- Michael J. Rabus; Ahmuty, Demers & McManus; New York, NY for RK Cooling & Heating System, LLC
- Robert Schnapp; Law Offices of Robert Schnapp; New York, NY for 656 Warwick Realty, LLC, Mecca Contracting, Inc.

Facts:

On Aug. 8, 2017, plaintiff Alan Moonsammy, 43, a construction worker employed by RK Cooling & Heating System LLC, was installing large air-conditioning units in a two-family house, which was being built at 656 Warwick Street, Brooklyn. In order to install a large AC unit on top of a bulkhead located on the building's rooftop, Moonsammy and three of his co-workers positioned themselves on top of the bulkhead while four other co-workers were located on the roof. The workers on the roof then lifted the AC unit and attempted to pass it to the workers on the bulkhead, who were pulling the AC unit upwards to put on top of the bulkhead. However, while they were in the process of manually hoisting the AC unit from the rooftop to the top of the bulkhead, Moonsammy fell off the bulkhead, landing on the roof 10 to 12 feet below. Moonsammy landed on his back, fracturing it.

Moonsammy sued the owner of the premises, 656 Warwick Realty LLC, and the general contractor for the project, Mecca Contracting Inc. Moonsammy alleged that the defendants violated the New York State Labor Law.

Mecca Contracting and 656 Warwick Realty impleaded Moonsammy's employer, RK Cooling & Heating, seeking indemnification.

Moonsammy claimed that a crane should have been used to lift the AC unit onto the bulkhead and that the defendants were negligent for failing to provide one. Thus, Moonsammy's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Moonsammy was not provided the proper, safe equipment that is a requirement of the statute. Counsel also contended that the site was not properly safeguarded and that, as such, it violated Labor Law § 241(6). Counsel further contended that the site violated the general safety provisions of Labor Law § 200.

Plaintiff's counsel moved for summary judgment on the issue of liability, and the defendants moved to the dismiss the claims against them.

On July 16, 2021, Judge Peter Sweeney dismissed the Section 240(1) claim as to 656 Warwick Realty, and dismissed the Section 241(6) claims against both Mecca Contracting and 656 Warwick Realty. However, Sweeney denied the motions to dismiss the Section 200 claims against the defendants, leaving that matter for the trial judge, and granted plaintiff's counsel's motion for summary judgment on the issue of Labor Law § 240(1) as to Mecca Contracting only. Ultimately, 656 Warwick Realty was let out of the case, and the matter proceeded to trial against Mecca Contracting on the issue of damages only.

Injury:

Following the accident, Moonsammy was unable to move his lower extremities and he had no sensation below his waist. He was taken by ambulance to Brookdale Hospital Medical Center, in Brooklyn, where he was diagnosed with thoracic injuries, including a burst fracture of the T8 vertebra with retropulsed fragments into the spinal canal and a fracture of the right T9 transverse process. He also sustained several fractured ribs. In order to stabilize the spine, Moonsammy underwent emergency surgery, which consisted of an open reduction of the fracture dislocation and spinal fusion at the T6-7, T7-8, T8-9 and T9-10 levels. However, Moonsammy was ultimately rendered a paraplegic.

Moonsammy remained at Brookdale Hospital for approximately 2.5 weeks before being transferred to Mount Sinai Brooklyn for inpatient rehabilitation. He remained at Mount Sinai Brooklyn for nearly three months, during which he underwent daily medical care from physical medicine, urology, infectious disease, and gastroenterology specialists. He also underwent daily nursing care, physical therapy, and occupational therapy.

Moonsammy remains a paraplegic and is wheelchair bound. He is also incontinent of bowel and bladder and he is required to self-catheterize. Moonsammy continues to require ongoing medical care and treats with various specialists, including physical medicine and urology experts. He also requires the daily use of medications and assistance with activities of daily living.

Moonsammy sought recovery for his past and future medical costs, and past and future pain and suffering.

Result:

The jury determined that Moonsammy's damages totaled $53.5 million.

Alan Moonsammy

$ 1,000,000 Past Medical Cost

$ 7,500,000 Future Medical Cost

$ 30,000,000 Future Pain Suffering

$ 15,000,000 Past Pain Suffering

$ 53,500,000 Plaintiff's Total Award

Trial Information:

Judge:	Reginald A. Boddie
Trial Length:	0
Trial Deliberations:	45 minutes
Editor's Comment:	This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.
Writer	Priya Idiculla

Hospital claimed extremists made defamatory statements

Type: Verdict-Plaintiff

Amount: $52,500,000

State: Idaho

Venue: Ada County

Court: Fourth Judicial District Court of the State of Idaho, Ada County, ID

Case Type:
- *Privacy* - Invasion of Privacy
- *Intentional Torts* - Conspiracy; Defamation; Intentional Infliction of Emotional Distress

Case Name: St. Luke's Health System, Ltd; St. Luke's Regional Medical Center, Ltd; Chris Roth, an individual; Natasha D. Erickson, MD, an individual; and Tracy W. Jungman, NP, an individual v. Ammon Bundy, an individual; Ammon Bundy For Governor, a political organization; Diego Rodriguez, an individual; Freedom Man Press LLC, a limited liability company; Freedom Man PAC, a registered political action committee; and People's Rights Network, a political organization and an unincorporated association, No. CV01-22-06789

Date: July 24, 2023

Plaintiff(s):
- Chris Roth, (, 0 Years)
- All Plaintiffs, (, 0 Years)
- Tracy W. Jungman, (, 0 Years)
- Natasha D. Erickson, (, 0 Years)
- St. Luke's Health System Ltd. (, 0 Years)
- St. Luke's Regional Medical Center Ltd. (, 0 Years)

Plaintiff Attorney(s):
- Erik Stidham; Holland & Hart LLP; Boise ID for St. Luke's Health System Ltd., Chris Roth,, St. Luke's Regional Medical Center Ltd., Natasha D. Erickson,, Tracy W. Jungman
- Alexandra Grande; Holland & Hart LLP; Boise ID for St. Luke's Health System Ltd., Chris Roth,, St. Luke's Regional Medical Center Ltd., Natasha D. Erickson,, Tracy W. Jungman
- Jennifer Jensen; Holland & Hart LLP; Boise ID for St. Luke's Health System Ltd., Chris Roth,, St. Luke's Regional Medical Center Ltd., Natasha D. Erickson,, Tracy W. Jungman

Plaintiff Expert (s):

- Devin Burghart; Internet Defamation; Seattle, WA called by: Erik Stidham, Alexandra Grande, Jennifer Jensen
- Dennis R. Reinstein C.P.A.; Accounting; Boise, ID called by: Erik Stidham, Alexandra Grande, Jennifer Jensen
- Camille LaCroix M.D.; Forensic Psychiatry; Boise, ID called by: Erik Stidham, Alexandra Grande, Jennifer Jensen
- Jessica Flynn; Internet Defamation; Boise, ID called by: Erik Stidham, Alexandra Grande, Jennifer Jensen
- Spencer Fomby; Law Enforcement; Austin, TX called by: Erik Stidham, Alexandra Grande, Jennifer Jensen

Defendant(s):

- Ammon Bundy
- Freedom Man PAC
- Diego Rodriguez
- Freedom Man Press LLC
- People’s Rights Network
- Ammon Bundy for Governor

Defense Attorney(s):

- None reported for Ammon Bundy, Ammon Bundy for Governor, Diego Rodriguez, Freedom Man PAC, People’s Rights Network, Freedom Man Press LLC

Facts:

In 2022, plaintiff St. Luke's Hospital in Boise was accused of allegedly trafficking Christian newborn babies to homosexual parents. The accusations were made by Ammon Bundy, a former candidate for Idaho governor who founded the activist People’s Rights Network, and by one of Bundy’s acolytes, Diego Rodriguez.

In early March 2022, plaintiff Dr. Natasha Erickson and plaintiff Tracy Jungman, a nurse practitioner, had treated Rodriguez’s infant grandson at St. Luke’s. The child was released home with his parents on March 4.

After the child’s parents allegedly failed to follow discharge instructions and missed a follow-up appointment, the state’s Department of Health and Welfare was contacted. The child was removed from the mother's custody and brought to a St. Luke’s hospital.

During this time, Bundy and Rodriguez posted numerous inflammatory statements about the plaintiffs. They specifically told their followers that the hospital was mistreating the infant. Between March 12 and March 17, the men organized large protests in which hundreds of their supporters surrounded the hospital with weapons and demanded the release of the child. As a result, the hospital had to go into lockdown on March 15.

The infant’s health improved a short time later and he was released back to his parents.

Erickson, Jungham, St. Luke’s and the hospital’s chief executive officer, Chris Roth, sued Bundy and Rodriguez. The plaintiffs also sued related entities Ammon Bundy for Governor, Freedom Man PAC (FMP), People’s Rights Network (PRN) and Freedom Man

Press, LLC. The lawsuit included claims for defamation, invasion of privacy, intentional infliction of emotional distress, trespassing, unfair business practices, violation of the Idaho Charitable Solicitation Act and civil conspiracy.

The defendants did not hire counsel or appear in court. Bundy fled the state and was issued warrants for contempt of court.

Plaintiffs' counsel claimed Bundy and Rodriguez acted in concert with the other defendants to launch a knowingly dishonest smear campaign that accused state employees, the judiciary, the police, primary care providers and the St. Luke's defendants of kidnapping, trafficking, sexually abusing and killing Idaho children.

The defendants allegedly made numerous false statements and about St. Luke's. Plaintiffs' counsel specifically said that the defendants accused St. Luke's of being "world famous" for "mistreating people," "killing people" and "stealing babies from their parents." Per plaintiffs' counsel, the defendants repeatedly told their followers and supporters to disrupt St. Luke's operations.

Plaintiffs' counsel claimed that PRN also published a poster with the caption: "WANTED: Chris Roth, President/CEO of St. Luke's." Per plaintiffs' counsel, the poster accused Roth of "criminal accessory of child abduction and deprivation of rights under color of law." The defendants also encouraged protestors to make signs using this image, plaintiffs' counsel argued.

According to the plaintiffs, Rodriguez publicly stated that Erickson is incompetent and that the "hospital doesn't understand even the basic common-sense things that anybody understands." Rodriguez and FMP also allegedly stated that Jungman "personally financially benefitted from this child trafficking" and "takes innocent little children that have just been ripped from their families and starts looking at and asking them about their privates." Per plaintiffs' counsel, FMP and Rodriguez also published a statement implying Jungman committed "medical malpractice."

Plaintiffs' counsel contended that all of these statements were false and defamatory. Plaintiffs' counsel maintained the hospital properly treated the infant for dehydration and malnourishment. Plaintiffs' counsel further argued that the defendants never abused or harmed the infant and were simply concerned about the child's well-being.

Injury: St. Luke's claimed the defendants' actions caused patients to cancel appointments and treatment, leading to lost revenue. St. Luke's also had to pay for increased security during the protests, plaintiffs' counsel noted.

The hospital's senior management officers additionally testified that it is now more difficult to recruit medical providers to Idaho. Other employees stated they had to leave St. Luke's because of the continued protests and intimidation.

Erickson testified that she has considered quitting the hospital, and Jungman said that the defendants' actions have affected her interactions with parents of other patients. The two plaintiffs also stated that they live in constant fear. The plaintiffs' forensic psychiatry expert additionally opined that Erickson and Jungman's emotional distress gets worse each time someone posts a defamatory statement or threat about them.

The plaintiffs sought recovery of compensatory and punitive damages against each defendant. Plaintiffs' counsel asked the jury to award between $16 million and $37 million in compensatory damages.

Result: The jury awarded the plaintiffs $52,500,000.

The plaintiffs also filed a motion for permanent injunctive relief. The court granted the motion and ordered the defendants to remove all statements defaming and invading the privacy of the plaintiffs.

All Plaintiffs

$ 5,200,000 punitive damages against People's Rights Network

$ 1,650,000 punitive damages against Ammon Bundy for Governor

$ 6,200,000 compensatory damages against Ammon Bundy

$ 5,200,000 compensatory damages against People's Rights Network

$ 1,550,000 compensatory damages against Ammon Bundy for Governor

$ 7,000,000 compensatory damages against Rodriguez

$ 6,500,000 punitive damages against Rodriguez

$ 6,550,000 compensatory damages against Freedom Man entities

$ 6,500,000 punitive damages against Freedom Man entities

$ 52,500,000 Plaintiff's Total Award

Tracy Jungman

Natasha Erickson

St. Luke’s Regional Medical Center Ltd.

Chris Roth

St. Luke’s Health System Ltd.

Trial Information:

Judge:	Nancy Baskin
Trial Length:	2 weeks
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiff’s counsel. Additional information was gleaned from court documents. The defendants were not asked to contribute.
Writer	Jason Cohen

Insurer willfully denied coverage in opioid death suits: plaintiffs

Type: Verdict-Plaintiff

Amount: $52,000,000

Actual Award: $52,810,100

State: New Mexico

Venue: Bernalillo County

Court: Bernalillo County District Court, 2nd, NM

Injury Type(s):
- *other* - death; drug overdose

Case Type:
- *Insurance* - Coverage; Bad Faith

Case Name: Dennis Murphy, in his capacity as Personal Representative of the Wrongful Death Estate of Ruben Bonilla, Jr., and, Annie-Laurie Coogan, in her capacity as Personal Representative of the Wrongful Death Estate of Serina T. Clark, as assignees for claims brought by Plaintiffs, Clarke C. Coll, Chapter 7 Trustee of the Bankruptcy Estate of Pawan Kumar Jain, and Annamma Philp, in her capacity as a named insured and as a third-party beneficiary v. The Doctors Company, a foreign insurance company, The Doctors Management Company, a foreign for-profit company, Professional Underwriters Liability Insurance Company, a foreign insurance company; Western Assurance Corporation, a New Mexico for-profit corporation, No. D-202-CV-2016-04582

Date: January 17, 2023

Plaintiff(s):
- Dennis Murphy, (Male, 0 Years)
- Annie-Laurie Coogan, (Female, 0 Years)
- Estate of Serina T. Clark, (Female, 28 Years)
- Estate of Ruben Bonilla, Jr., (Male, 43 Years)

Plaintiff Attorney(s):

- Ben Davis; Davis Kelin Law Firm LLC; Albuquerque NM for Annie-Laurie Coogan,, Estate of Serina T. Clark
- Zackeree S. Kelin; Davis Kelin Law Firm LLC; Albuquerque NM for Annie-Laurie Coogan,, Estate of Serina T. Clark
- Mollie C. McGraw; McGraw Law, LLC; Las Cruces NM for Dennis Murphy,, Estate of Ruben Bonilla, Jr.

Plaintiff Expert (s):

- Elliott S. Flood; Practices & Standards; Austin, TX called by: Ben Davis, Zackeree S. Kelin, Mollie C. McGraw

Defendant(s):

- The Doctors Company
- Western Assurance Corporation
- The Doctors Management Company
- Professional Underwriters Liability Insurance Company

Defense Attorney(s):

- Jon T. Neumann; Greenberg Traurig, LLP; Phoenix, AZ for Professional Underwriters Liability Insurance Company
- Aaron J. Lockwood; Greenberg Traurig, LLP; Phoenix, AZ for Professional Underwriters Liability Insurance Company

Facts:

In 2013, Professional Underwriters Liability Insurance Co. refused to defend and indemnify its insured, a medical doctor who was sued for the deaths of two of his patients, plaintiffs' decedents Ruben Bonilla Jr., 43, and Serina Clark, 28. Clark and Bonilla's estates had alleged that Dr. Pawankumar Jain injudiciously prescribed opioid medications to Bonilla and Clark, resulting in their deaths in August 2010.

Bonilla and Clark's estates sued Professional Underwriters Liability Insurance Co., or PULIC. They alleged that PULIC violated New Mexico's Unfair Insurance Practices Act and the New Mexico Unfair Practices Act. There were other entities named as defendants in the suit. The claims against those parties either were dismissed, or concluded via dispositions involving undisclosed terms.

Prior to trial, the court granted the plaintiffs' motions for summary judgment, finding as a matter of law that PULIC violated the Unfair Insurance Practices Act in multiple ways. The jury was left to decide whether PULIC also violated the Unfair Practices Act, and whether it did so willfully.

According to the plaintiffs, in 2012, PULIC was notified that the New Mexico Medical Board had suspended Jain's license for injudicious prescribing that had resulted in 17 patient deaths. PULIC immediately cancelled Jain's policy, but chose not to record the 17 patient deaths in its system. Bonilla and Clark were two of those 17 patients.

In August 2013, Bonilla and Clark's families filed separate lawsuits against Jain for medical malpractice and wrongful death. PULIC denied Jain a defense to the lawsuits, asserting that its insured had failed to timely submit the claims, despite it being on notice of the 17 patient deaths before it cancelled his policy. Jain then filed for bankruptcy protection. The Bonilla and Clark families were the only creditors with claims in the

bankruptcy. In 2016, the U.S. Bankruptcy Trustee filed suit against PULIC on Jain's behalf for its failure to defend and indemnify its insured against the Bonilla and Clark lawsuits.

In 2017, Jain's bankruptcy estate paid the Bonilla and Clark families approximately $680,000 and assigned the insurance bad-faith lawsuit to them. In 2020, a New Mexico District Court held that PULIC owed Jain a defense and indemnity for the Bonilla and Clark wrongful-death lawsuits in 2013, PULIC breached its insurance contract with Jain, and PULIC violated New Mexico's Unfair Insurance Practices Act.

The plaintiffs' expert in insurance industry standards opined that PULIC willfully violated the Unfair Practices Act. According to the expert, a reasonable insurer would assist its policyholder to document claims, not work to deny coverage and leave its policyholder uninsured and exposed to lawsuits. The expert testified that PULIC chose not to record and investigate the claims related to the 17 drug-toxicity deaths, including the deaths of Clark and Bonilla, and placed its interest above that of its insured

The defense maintained that PULIC's conduct met the standards under New Mexico's Unfair Practices Act. The defense contended that PULIC's failure to recognize and record a claim when it received the Medical Board documents regarding 17 patient deaths by its insured were innocent mistakes that did not warrant punitive damages.

Injury:

The plaintiffs sought to recover punitive damages after the court directed a verdict on compensatory damages. The plaintiffs' counsel suggested that, since PULIC willfully violated the Unfair Insurance Practices Act, the plaintiffs were entitled to $104 million, the net worth of PULIC in 2021.

The defense maintained that the plaintiffs were not entitled to punitive damages because PULIC's conduct was not willful, wanton, intentional or in reckless disregard of its insured.

Result:

Prior to trial, the court found that PULIC had breached its insurance contract with Jain, violated the New Mexico Unfair Insurance Practices Act in multiple ways, and acted in bad faith by breaching its duty to defend its insured. During trial, the court determined that compensatory damages were limited to $810,000, which was the amount Jain lost in the bankruptcy.

The jury found that PULIC violated the Unfair Practices Act and did so willfully. The jury determined that PULIC's conduct was in reckless disregard for the interests of the insured, based on a dishonest judgment, or otherwise malicious, willful or wanton. The jury awarded the plaintiffs $52 million in punitive damages.

Estate of Serina Clark

Annie-Laurie Coogan

Estate of Ruben Bonilla, Jr.

Dennis Murphy

Trial Information:

Judge: Elaine P. Lujan

Trial Length: 7 days

Trial Deliberations: 2 hours

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Estate: Negligence of cement company caused worker's death

Type: Verdict-Mixed

Amount: $50,500,000

Actual Award: $47,975,000

State: Kentucky

Venue: Jefferson County

Court: Jefferson County Circuit Court, KY

Injury Type(s):
- *other* - death; conscious pain and suffering
- *pulmonary/respiratory* - asphyxia

Case Type:
- *Wrongful Death* - Survival Damages
- *Workplace* - Workplace Safety
- *Products Liability* - Equipment; Failure to Warn; Industrial Machinery
- *Premises Liability* - Failure to Warn
- *Worker/Workplace Negligence* - Negligent Maintenance

Case Name: Jessica Snyder, administratrix of the Estate of Richard Joseph Snyder and Jessica Snyder, individually and Jessica Snyder, natural parent and next friend of Alissa Snyder, a minor and Jessica Snyder, natural parent and next friend of Ava Snyder, a minor and Jessica Snyder, natural parent and next friend of Sean Snyder, a minor and Richard Snyder, individually and Karen Snyder, individually v. Kosmos Cement Company and Cemex, Inc. and Lone Star Industries, Inc. and PEBCO, Inc. and BE&K Building Group, LLC, No. 17-CI-002146

Date: June 29, 2023

Plaintiff(s):
- Ava Snyder, (, 0 Years)
- Sean Snyder, (, 0 Years)
- Karen Snyder, (, 0 Years)
- Alissa Snyder, (, 0 Years)
- All Plaintiffs, (, 0 Years)
- Jessica Snyder, (, 0 Years)
- Richard Snyder, (, 0 Years)
- Estate of Richard Joseph Snyder, (Male, 33 Years)

Plaintiff Attorney(s):

- Jeremiah A. Byrne; Frost Brown Todd LLP; Louisville KY for Estate of Richard Joseph Snyder,, Jessica Snyder,, Alissa Snyder,, Sean Snyder,, Ava Snyder
- Chadwick N. Gardner; Gardner Law PLLC; Louisville KY for Estate of Richard Joseph Snyder,, Jessica Snyder,, Alissa Snyder,, Sean Snyder,, Ava Snyder

Plaintiff Expert (s):

- Bill Kitzes; Consumer Products; Boca Raton, FL called by: Jeremiah A. Byrne, Chadwick N. Gardner
- James D. McIntosh CIH, CSP; Industrial Safety; Charleston, WV called by: Jeremiah A. Byrne, Chadwick N. Gardner
- Justin McProud; Mechanical; Renton, WA called by: Jeremiah A. Byrne, Chadwick N. Gardner
- William T. Baldwin Ph.D.; Economics; Lexington, KY called by: Jeremiah A. Byrne, Chadwick N. Gardner

Defendant(s):

- Cemex Inc.
- PEBCO Inc.
- Kosmos Cement Co.
- AXA Insurance Company
- BE&K Building Group LLC
- Lone Star Industries Inc.
- American International Group, Inc.
- Huelsman & Sweeney Construction Inc.
- National Union Fire Insurance Company of Pittsburgh, Pennsylvania

Defense Attorney(s):

- John R. Martin Jr.; Landrum & Shouse LLP; Louisville, KY for PEBCO Inc.
- David F. Cooney; Cooney Trybus Kwavnick Peets, PLC; Fort Lauderdale, FL for Kosmos Cement Co., Cemex Inc., Lone Star Industries Inc.
- Richard W. Edwards; Boehl Stopher & Graves, LLP; Louisville, KY for Kosmos Cement Co., Cemex Inc., Lone Star Industries Inc.
- Matthew B. Gay; Boehl Stopher & Graves, LLP; Louisville, KY for Kosmos Cement Co., Cemex Inc., Lone Star Industries Inc.
- Denis C. Wiggins; Gwin, Steinmetz & Baird, PLLC; Louisville, KY for Huelsman & Sweeney Construction Inc.
- Kathleen E. Watson; Gwin, Steinmetz & Baird, PLLC; Louisville, KY for Huelsman & Sweeney Construction Inc.

Facts:

On Aug. 9, 2016, plaintiff's decedent Richard “Joey” Snyder, 33, a union ironworker for Huelsman & Sweeney, was repairing a barge loadout chute at the Kosmos Cement Plant in Louisville. The equipment included a cable system with pulleys.

While Snyder was changing the pulleys, his neck became trapped between one of the cables and the chute. He died from asphyxia at the scene.

Snyder’s widow, Jessica Snyder, acting individually, on behalf of her late husband’s estate and as the natural parent of their three children, sued Kosmos Cement along with the plant’s owner, Cemex Inc., and a related entity, Lone Star Industries. The plaintiffs additionally sued PEBCO, which designed and sold the chute, and BE&K Building Group, which assembled the chute within the plant.

The lawsuit alleged that the Kosmos defendants failed to properly repair and maintain the chute. The plaintiffs further alleged that the subject chute was unreasonably dangerous and that PEBCO failed to provide proper inspections, instructions and warnings related to the chute. There was also a third-party claim against the decedent's employer, Huelsman & Sweeney Construction.

Joey Snyder's parents, Richard and Karen Snyder, were originally plaintiffs in the lawsuit. However, the court dismissed their claims prior to trial. BE&K Building Group was also dismissed from the case.

According to plaintiffs' counsel, Snyder and several co-workers initially released the tension from the cables on the date of the incident so Snyder could repair the pulleys. However, plaintiffs' counsel contended, a portion of the equipment then collapsed. Plaintiffs' counsel claimed that this put tension on the cables, causing them to pin Snyder against the chute.

Plaintiffs' counsel specifically alleged that the incident occurred because the chute's adapter ring failed. Plaintiffs' counsel argued that the ring was carrying excess weight from accumulated cement. The ring was also missing multiple bolts, plaintiffs' counsel claimed.

Plaintiffs' counsel contended that the Kosmos defendants failed to properly clean the equipment. Plaintiffs' counsel further claimed that Kosmos refused to shut down the chute for repairs because the company wanted to maintain productivity.

For its claim against PEBCO, plaintiffs' counsel noted that the manufacturer inspected the chute at the plant in July 2014 and January 2015. Plaintiffs' counsel argued that PEBCO should have done more to warn Kosmos that the excess cement and lack of maintenance made the equipment dangerous.

Kosmos denied it was negligent in its maintenance of the chute. The defense argued Snyder caused his own death by improperly connecting the rigging**.**

Injury:

Snyder died of asphyxiation. He left behind his wife, Jessica Snyder, and his children, Alissa, Sean and Ava Snyder. At the time of Joey Snyder's death, the children were 15, 13 and 3 years old, respectively.

The plaintiffs sought recovery of damages for Joey Snyder's destruction of earning capacity and his conscious pain and suffering. The plaintiffs also sought damages for Jessica Snyder's loss of consortium and for the children's loss of love, affection, guidance, care, comfort and protection. The plaintiffs additionally sought punitive damages.

Result:

The jury determined that Kosmos failed in its duty to operate and maintain the plant using ordinary care and in its duty to warn Joey Snyder of hidden defects and dangers. The jury further concluded that these failures were substantial factors in causing Snyder's death. The jury additionally determined that Snyder failed to exercise ordinary care for his own safety and that this failure was also a substantial factor in causing his death.

The jury returned a defense verdict in favor of PEBCO and determined that Huelsman & Sweeney Construction was not liable. The jury assigned 95 percent of the fault to Kosmos and the remaining five percent to Snyder. The jury also concluded that Kosmos' conduct constituted oppression, fraud, malice or gross negligence.

The jury awarded the plaintiffs $50.5 million. The comparative-fault reduction produced a net verdict of $47,975,000.

All Plaintiffs

$ 25,000,000 Punitive Exemplary Damages

$ 25,000,000 Plaintiff's Total Award

Karen Snyder

Richard Snyder

Ava Snyder

$ 3,000,000 loss of love, affection, guidance, care, comfort and protection through Feb. 2034

$ 3,000,000 Plaintiff's Total Award

Sean Snyder

$ 3,000,000 loss of love, affection, guidance, care, comfort and protection through Feb. 2024

$ 3,000,000 Plaintiff's Total Award

$ 3,000,000 loss of love, affection, guidance, care, comfort and protection through Dec. 2021

$ 3,000,000 Plaintiff's Total Award

Jessica Snyder

$ 10,000,000 loss of consortium

$ 10,000,000 Plaintiff's Total Award

Estate of Richard Snyder

$ 5,000,000 destruction of earning capacity

$ 1,500,000 conscious pain and suffering

$ 6,500,000 Plaintiff's Total Award

Trial Information:

Judge:	Tracy E. Davis
Trial Length:	0
Trial Deliberations:	0
Jury Vote:	9-3 on Snyder’s negligence; 10-2 on awards to Snyder’s children and on Kosmos’ gross negligence; 11-1 on liability apportionment and on punitive damages award; 12-0 on all other questions
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel for PEBCO, the Kosmos defendants and Huelsman & Sweeney did not respond to the reporter's phone calls. Counsel for the remaining defendants was not asked to contribute.

Writer Jason Cohen

Locked-in syndrome caused by medical negligence: lawsuit

Type: Verdict-Mixed

Amount: $46,995,621

Actual Award: $16,448,467

State: Nevada

Venue: Clark County

Court: Clark County District Court, NV

Injury Type(s):
- *arm*
- *leg*
- *sensory/speech* - communicative impairment; aphasia; speech/language, impairment of
- *pulmonary/respiratory* - respiratory distress
- *paralysis/quadriplegia* - paralysis; quadriplegia

Case Type:
- *Medical Malpractice* - Hospital; Failure to Treat; Failure to Detect; Failure to Monitor; Negligent Treatment

Case Name: Maureen Underwood as Guardian of Amy Geiler; Sheryl Macaraeg Martinez as Guardian of Gabrielle Macaraeg v. Sunrise MountainView Hospital, Inc., a Nevada Corporation; Vegas Hospital Care, LLC d/b/a Mountain's Edge Hospital, a Delaware Limited Liability Company; Fremont Emergency Services (Mandavia) Ltd., a Nevada Corporation; NKDHC (Rudnitsky) PLLC d/b/a Nevada Kidney Disease and Hypertension Center, a Nevada Professional Limited Liability Company; Russell Clark, M.D., an Individual; Ejo John, M.D., an Individual; Amit Valera, D.O., an Individual; Larry Marshall, M.D., an Individual; Teena Tandon, M.D., an Individual; Jeffrey Ryu, M.D., an Individual; Cristol Hong, N.P., an Individual; Doe Doctor I, an Individual; Doe Doctor II, an Individual; Does I-X; and Roe Business Entities XI-XX, inclusive, No. A-20-808331-C

Date: February 07, 2023

Plaintiff(s):
- Amy Geiler, (Female, 47 Years)
- Maureen Underwood, (Female, 0 Years)
- Gabrielle Macaraeg, (Female, 0 Years)
- Sheryl Macaraeg Martinez , (Female, 0 Years)

Plaintiff Attorney(s):

- Sean K. Claggett; Claggett & Sykes Law Firm; Las Vegas NV for Maureen Underwood,, Amy Geiler,, Sheryl Macaraeg Martinez ,, Gabrielle Macaraeg
- Jennifer Morales; Claggett & Sykes Law Firm; Las Vegas NV for Maureen Underwood,, Amy Geiler,, Sheryl Macaraeg Martinez ,, Gabrielle Macaraeg
- Shirley Blazich; Blazich Law Group; Las Vegas NV for Maureen Underwood,, Amy Geiler,, Sheryl Macaraeg Martinez ,, Gabrielle Macaraeg

Plaintiff Expert (s):

- Amy L. Magnusson M.D.; Physical Medicine; San Diego, CA called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- Ian Jenkins M.D.; Emergency Medicine; San Diego, CA called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- James F. Lineback M.D.; Life Expectancy & Mortality; Newport Beach, CA called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- Joshua A. Schwimmer M.D.; Nephrology; New York, NY called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- Susan Wright B.S.N., R.N.; Life Care Planning; Friendsville, TN called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- Michael Menchine M.D.; Emergency Medicine; Los Angeles, CA called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich
- Terrence M. Clauretie Ph.D., CPA; Lost Earnings (Economics); Las Vegas, NV called by: Sean K. Claggett, Jennifer Morales, Shirley Blazich

Defendant(s):

- Does I-X
- Doe Doctor I
- Doe Doctor II
- Ejo John, M.D.
- Amit Valera, D.O.
- Jeffrey Ryu, M.D.
- Cristol Hong, N.P.
- Teena Tandon, M.D.
- Russell Clark, M.D.
- Larry Marshall, M.D.
- NKDHC (Rudnitsky) PLLC
- Vegas Hospital Care LLC
- Roe Business Entities XI-XX
- Sunrise MountainView Hospital, Inc.
- Fremont Emergency Services (Mandavia) Ltd.

Defense Attorney(s):

- Anthony D. Lauria; Lauria Tokunaga Gates & Linn, LLP; Las Vegas, NV for Ejo John, M.D.
- Michael E. Prangle; Hall Prangle & Schoonveld LLC; Chicago, IL for Sunrise MountainView Hospital, Inc.
- Kenneth M. Webster; Hall Prangle & Schoonveld LLC; Las Vegas, NV for Sunrise MountainView Hospital, Inc.
- Trent L. Earl; Hall Prangle & Schoonveld LLC; Las Vegas, NV for Sunrise MountainView Hospital, Inc.
- Patricia Egan Daehnke; Collinson, Daehnke, Inlow & Greco Attorneys at Law; Las Vegas, NV for Amit Valera, D.O.

Defendant Expert(s):

- Benny Gavi M.D., M.T.S.; Hospitalist Medicine; Stanford, CA called by: for Michael E. Prangle, Kenneth M. Webster, Trent L. Earl
- James D. Leo M.D.; Hospitalist Medicine; Long Beach, CA called by: for Patricia Egan Daehnke
- Melissa Keddington R.N.; Life Care Planning; Anaheim, CA called by: for Michael E. Prangle, Kenneth M. Webster, Trent L. Earl

Facts:

In January 2019, plaintiff Amy Geiler was diagnosed with osmotic demyelination syndrome, otherwise known as locked-in syndrome, which a neurological condition that relegates the body to a paralytic state while the person has normal brain function.

Maureen Underwood, on behalf of Geiler, sued Dr. Ejo John and his supervisor, Dr. Amit Valera, both hospitalists, as well as MountainView Hospital. The lawsuit alleged that Geiler's irrevocable and permanent condition was due to substandard care provided by John and Valera to Geiler at MountainView Hospital in Las Vegas. A number of other entities were originally named as defendants in the suit, but were dismissed or otherwise concluded via dispositions involving undisclosed terms.

On Jan. 1, 2019, Geiler was taken to MountainView Hospital after she fell and struck her head on a dresser. Upon admission, Geiler was diagnosed with hyponatremia as her sodium levels were abnormally low at 107 milliequivalents per liter. Normal sodium levels are between 135 and 145 mEq per liter. Anything below 120 mEq is considered critically low, which leads to swelling and excessive water in a patient's brain cells. This can cause confusion, seizures or coma, according to plaintiffs' counsel.

Intravenous fluids were ordered, which caused Geiler's sodium level to rise three points within an hour and 21 minutes. Since the physician overseeing Geiler's care was not permitted to admit Geiler, per hospital policy, Geiler was assigned to John, a hospitalist.

According to plaintiffs' counsel, within five minutes of assuming care, John decided not to admit Geiler and instead transferred her to the hospital where Valera worked. Valera had allegedly told Geiler that her insurance was not accepted by the hospital and he wanted to save her from a surprise bill. However, Geiler's insurance company reportedly told Valera that Geiler could be admitted to the hospital under her health insurance, but Valera still made the decision to transfer Geiler to another facility. In the transfer paperwork, Valera noted that Geiler was stable for transfer and had no emergency medical condition.

Plaintiffs' counsel claimed that Geiler was transferred to Valera's hospital, which lacked an intensive care unit or an onsite emergency department and lacked staff trained in hyponatremia. Counsel argued that it was not until 24 hours after she was transferred that Geiler was seen by a specialist. Per counsel, her critically low sodium levels were not reported to the correct doctors and were not acted upon, causing her sodium level to increase by more than 17 points in 24 hours and resulting in locked-in syndrome.

The plaintiffs' expert in nephrology discussed hyponatremia and how it is a serious

condition that requires immediate attention. The expert faulted the defendants for failing to admit Geiler at MountainView and for failing to administer emergency treatment that would have raised her sodium levels and prevented locked-in syndrome. The expert concluded that Valera instead negligently transferred Geiler to a lower-acuity facility that failed to provide necessary treatment, which resulted in her permanent condition.

The plaintiffs' experts in emergency medicine testified that John's treatment of Geiler fell below the standard of care because he failed to observe that Geiler's low-sodium level was rising too quickly and failed to provide the intensified monitoring her compromised condition required. According to the experts, the defendants should have known that the failure to properly transfer Geiler to a higher and more appropriate level of care would create an unreasonable risk of brain injury to a high-risk patient such as Geiler.

The defense maintained that the treatment administered to Geiler at MountainView Hospital met the standard of care. Valera's expert in hospital medicine testified that it was reasonable for Valera to transfer Geiler to a lower-acuity facility based on the information John conveyed to him. The expert stated that it was the medical practitioners who treated Geiler before Valera first saw her who had the duty to act appropriately.

Counsel for MountainView attributed Geiler's sodium imbalance to her alleged alcohol use. MountainView's expert in hospital medicine testified that the saline infusions administered to Geiler were necessary and stabilized her condition.

MountainView's expert in hospital medicine confirmed that Geiler's condition rapidly improved after she received the initial saline infusions. According to the expert, Geiler was no longer in an altered mental state when she supposedly approved the transfer after being told that continued treatment at MountainView could result in a substantial bill.

John's counsel contended that the physician's treatment of Geiler was appropriate and lifesaving and any wrongdoing that occurred was due to the actions of the other defendants.

Injury:

On Jan. 7, 2019, Geiler was transferred to another hospital after her mental state declined and she suffered respiratory distress. She was intubated and her brain stem became permanently damaged, causing locked-in syndrome. Geiler was eventually transitioned into a brain-rehabilitation facility where she continued treatment at the time of trial.

The plaintiffs' expert in physical medicine testified that Geiler's condition will not improve and she requires round-the-clock care for the rest of her life.

According to the plaintiffs, Geiler has no voluntary muscle movement below her neck, leaving her unable to move her body, talk, eat or otherwise take care of herself. She is conscious, alert and has cognitive abilities, but cannot show facial expressions, speak, or meaningfully move her body. Geiler can hear her 5-year-old son talk to her, but cannot respond verbally, as she can only respond by blinking or sticking out her tongue.

The plaintiffs sought to recover $1,406,065.39 in past medical costs, $10 million in future medical care, $61,630 in past lost earnings and $527,926 in future lost earnings, plus damages for Geiler's past and future pain and suffering.

The defense's expert in life-care planning testified that the plaintiffs' projection for future medical expenses should be less since Geiler's life expectancy is significantly shortened by her locked-in syndrome.

Result:

The jury attributed 35 percent liability to Valera and 65 percent liability to the dismissed defendants. No liability was found against MountainView and John. The jury awarded Geiler $46,995,621.39. The amount was reduced to 16,448,467.49, pursuant to Nevada's law capping noneconomic damages in medical malpractice suits.

Gabrielle Macaraeg

Sheryl Martinez

Amy Geiler

$ 1,406,065.39 Past Medical Cost

$ 10,000,000 Future Medical Cost

$ 61,630 Past Lost Earnings

$ 527,926 Future Lost Earnings

$ 28,000,000 Future Pain Suffering

$ 7,000,000 Past Pain Suffering

$ 46,995,621.39 Plaintiff's Total Award

Maureen Underwood

Trial Information:

Judge: Veronica M. Barisich

Trial Length: 1 months

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Amazon accused of infringing voice tech patents

Type: Verdict-Plaintiff

Amount: $46,700,000

State: Delaware

Venue: Federal

Court: U.S. District Court, District of Delaware, Wilmington, DE

Case Type:
- *Intellectual Property* - Patents; Infringement
- *Intentional Torts* - Willful Misconduct

Case Name: VB Assets, LLC v. Amazon.com Services LLC, Amazon.com LLC, Amazon.com, Inc., Amazon Web Services, Inc., A2Z Development Center, Inc., Rawles LLC, AMZN Mobile LLC, AMZN Mobile 2 LLC, Amazon.com Services, Inc. and Amazon Digital Services LLC, No. 1:19-cv-01410-MN

Date: November 08, 2023

Plaintiff(s):
- VB Assets LLC (, 0 Years)

Plaintiff Attorney(s):
- James C. Yoon; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Alexander J. Turner; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Brad Tennis; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Jamie Y. Otto; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Matthew Macdonald; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Mikaela Evans-Aziz; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Ryan S. Benyamin; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC
- Ryan R. Smith; Wilson Sonsini Goodrich & Rosati PC; Palo Alto CA for VB Assets LLC

Defendant(s):

- Rawles LLC
- Amazon.com LLC
- AMZN Mobile LLC
- Amazon.com, Inc.
- AMZN Mobile 2 LLC
- Amazon.com Services LLC
- Amazon.com Services, Inc
- Amazon Web Services, Inc.
- Amazon Digital Services LLC
- A2Z Development Center, Inc.

Defense Attorney(s):

- Steven J. Balick; Ashby & Geddes, P.A.; Wilmington, DE for Amazon.com Services LLC
- J. David Hadden; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC
- Andrew C. Mayo; Ashby & Geddes, P.A.; Wilmington, DE for Amazon.com Services LLC
- Jeffrey Ware; Fenwick & West LLP; Seattle, WA for Amazon.com Services LLC
- Saina S. Shamilov; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC
- Allen W. Wang; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC
- Johnson K. Kuncheria; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC
- Min Wu; Fenwick & West LLP; San Francisco, CA for Amazon.com Services LLC
- Ravi R. Ranganath; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC
- Rebecca A.E. Fewkes; Fenwick & West LLP; Mountain View, CA for Amazon.com Services LLC

Facts:

In 2016, plaintiff VB Assets (VoiceBox) alleged that Amazon.com willfully violated several of its patents. At the time of trial, the patents at issue were No. 9,626,703 (Voice Commerce), 7,818,176 (System and Method for Selecting and Presenting Advertisements Based on Natural Language Processing of Voice-Based Input), 8,073,681 (System and Method for a Cooperative Conversational Voice User Interface) and 9,269,097 (System and Method for Delivering Targeted Advertisements and/or Providing Natural Language Processing Based on Advertisements).

VB Assets sued Amazon.com Services LLC, Amazon.com LLC, Amazon.com Inc., Amazon Web Services Inc., A2Z Development Center Inc., Rawles LLC, AMZN Mobile LLC, AMZN Mobile 2 LLC, Amazon.com Services Inc. and Amazon Digital Services LLC. The lawsuit alleged infringement of claims under the ‘681, ‘703, ‘176 and ‘097 patents (the Asserted Claims). The lawsuit alleged that Amazon infringed the Asserted Claims by making and using Alexa and further by making, selling and offering for sale Amazon’s Alexa products.

All of the defendants with the exception of Amazon.com Services LLC were dismissed prior to trial.

According to the lawsuit, VB Assets, through its predecessor companies VoiceBox Technologies Corp. and VoiceBox Technologies, Inc. (collectively, "VoiceBox" or "VoiceBox Technologies), pioneered voice-based search and commerce technology. According to plaintiff's counsel, VoiceBox invented what Amazon itself has described as "Echo-like" products long before Amazon did. Per counsel, in recognition of its many innovations, the U.S. Patent & Trademark Office awarded and issued the VoiceBox patents, and the innovations in these patents were fundamental to the development of voice commerce technology.

Plaintiff's counsel argued that VoiceBox Technologies' opportunities to promote and build a business based on these patents were crushed when Amazon introduced the infringing Echo and Alexa Products and used its enormous size and clout to poach dozens of VoiceBox Technologies' engineers and scientists.

Plaintiff's counsel alleged that, by January 2012, VoiceBox Technologies was a leader in NLU (Natural Language Understanding) and conversational voice technology. According to the lawsuit, VoiceBox contacted Amazon in 2011 to explore a potential business relationship whereby VoiceBox would provide core NLU services to Amazon. The lawsuit maintained that Amazon's corporate development department expressed interest and asked for "company and/or product overview slides" to facilitate an Oct. 7, 2011 teleconference. In response, per the lawsuit, VoiceBox provided Amazon with a presentation that described its patented technology and explicitly referred to VoiceBox's patented Contextual Speech Technology.

The lawsuit alleged that, in 2016, Amazon abruptly hired Philippe Di Cristo, who was VoiceBox's chief scientist. The lawsuit asserted that, while at VoiceBox, Di Cristo gained knowledge of the company's voice technology and had full access to VoiceBox Technologies' intellectual property. The lawsuit claimed Di Cristo explained on his LinkedIn Page that he had worked on an "Amazon Echolike system" while at VoiceBox. Plaintiff's counsel asserted that Di Cristo helped design and implement VoiceBox Technologies' patented technology into Amazon's Echo and other Alexa products.

Plaintiff's counsel argued that Amazon directly infringed, and continues to infringe, the Asserted Claims by making and using Alexa, and further by making, using, selling, offering for sale and/or importing into the United States Alexa products that embody or use the Asserted Claims. Counsel additionally argued that Amazon has been inducing, and continues to induce, infringement of the Asserted Claims of the patents at issue, by inducing others to make and use Alexa and further to make, use, sell, offer for sale or import products that include Alexa and embody or use the inventions claimed in the asserted patents. Also, counsel alleged that Amazon's infringement of the Asserted Claims was knowing, intentional and willful.

Amazon disputed that its products infringed on any of the Asserted Claims. Amazon further contended that the Asserted Claims are invalid for failure to satisfy one or more

requirements of patentability.

Injury: Amazon was alleged to have violated several patents held by VB Assets.

Amazon disputed that VB Assets was entitled to any damages.

Result: The jury found that Amazon.com Services LLC infringed on patents ‘681, ‘703, ‘176 and ‘097, the infringement was willful and the Asserted Claims were not invalid. It awarded VB Assets’ damages totaling $46.7 million, in the form of a running royalty.

VB Assets LLC

Trial Information:

Judge: Maryellen Noreika

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on court documents. Plaintiff's counsel declined to comment and defense counsel did not respond to the reporter's phone calls.

Writer Jason Cohen

Plaintiff: Defendants ignored risks inherent in teaching jiu-jitsu

Type: Verdict-Plaintiff

Amount: $46,475,112

State: California

Venue: San Diego County

Court: San Diego County Superior Court, North County, CA

Injury Type(s):
- *back* - anterolisthesis
- *neck* - anterolisthesis; fusion, cervical
- *brain* - stroke
- *other* - corpectomy; comminuted fracture
- *neurological* - nerve damage/neuropathy; nerve damage, spinal accessory nerve
- *arterial/vascular* - thrombosis/thrombus
- *surgeries/treatment* - discectomy
- *paralysis/quadriplegia* - quadriplegia

Case Type:
- *Worker/Workplace Negligence* - Labor Law

Case Name: Jack Greener v. M.Phelps, Inc. d.b.a. Del Mar Jiu Jitsu Club and Francisco Iturralde, No. 37-2020-00041382-CU-PO-CTL

Date: March 28, 2023

Plaintiff(s):
- Jack Greener, (Male, 27 Years)

Plaintiff Attorney(s):

- Shawn D. Morris; Morris, Sullivan & Lemkul, LLP; San Diego CA for Jack Greener
- Rahul Ravipudi; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- John W. Shaller; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- Paul A. Traina; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- Michael Malady; Morris, Sullivan & Lemkul, LLP; for Jack Greener
- Christian Barton; Morris, Sullivan & Lemkul, LLP; for Jack Greener

Plaintiff Expert (s):

- Jan Roughan R.N., C.R.R.N.; Life Care Planning; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Peter Formuzis Ph.D.; Economics; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Ricky A. Sarkisian Ph.D.; Vocational Rehabilitation; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Fardad Mobin M.D.; Neurosurgery; Beverly Hills, CA called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Rener Gracie; Life Care Planning; Torrance, CA called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Lawrence S. Miller M.D.; Geriatrics; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton

Defendant(s):

- Francisco Iturralde
- M.Phelps, Inc. dba Del Mar Jiu Jitsu Club

Defense Attorney(s):

- Robert T. Bergsten; Hosp, Gilbert & Bergsten; Pasadena, CA for M.Phelps, Inc. dba Del Mar Jiu Jitsu Club, Francisco Iturralde
- Mary M. Campo; Hosp, Gilbert & Bergsten; Pasadena, CA for M.Phelps, Inc. dba Del Mar Jiu Jitsu Club, Francisco Iturralde

Defendant Expert(s):

- A. Jubin Merati; Economics; , called by: for Robert T. Bergsten, Mary M. Campo
- Clark Gracie; ; Torrance, CA called by: for Robert T. Bergsten, Mary M. Campo
- Steve Molina Ph.D.; Vocational Rehabilitation; , called by: for Robert T. Bergsten, Mary M. Campo
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; , called by: for Robert T. Bergsten, Mary M. Campo
- N. Neil Brown; Neurosurgery; Tarpon Springs, FL called by: for Robert T. Bergsten, Mary M. Campo
- Melissa A Keddington; Life Care Planning; Brea, CA called by: for Robert T. Bergsten, Mary M. Campo
- Michael Phelps; ; Del Mar, CA called by: for Robert T. Bergsten, Mary M. Campo
- Francisco Iturralde; ; San Diego, CA called by: for Robert T. Bergsten, Mary M. Campo

Insurers:

- United States Fire Insurance Company

Facts:

On Nov. 29, 2018, plaintiff Jack Greener, 23, a student of San Diego State University, was enrolled as a beginner Brazilian jiu-jitsu student at Del Mar Jiu-Jitsu Club (DMJJC), located in Del Mar. A one-stripe white belt in Brazilian jiu-jitsu, the plaintiff began his training that day under the direct tutelage of DMJJC instructor, Francisco Iturralde.

Following a 10-minute warm-up, a 20-minute instructional period and a short sparring rotation with another student, Greener was paired with Iturralde, a second-degree black belt in Brazilian jiu-jitsu with multiple international championship titles. During their sparring session, Iturralde performed a technique on him, which caused Greener to suffer a spinal cord injury, rendering him an incomplete quadriplegic.

Greener sued both Iturralde and the Del Mar Jiu Jitsu Club, claiming defendants unreasonably increased the risk inherent in the activity of Brazilian jiu-jitsu by failing to adhere to the requisite standard of care and sought compensation for his past and future medical expenses, loss of earnings, physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation and emotional distress.

While sparring with Iturralde, Greener was placed in the turtle position -- a position where a person is balled up on all fours with their face down on the mat. If an opponent is in a turtle position, the goal should be to safely put that person on their side, which is known as “taking the back.” Instead, while positioned on top of Greener, Iturralde crouched on the balls of his feet, pinned Greener to the mat, immobilized his left arm and then launched himself up and over his opponent — placing his entire body’s weight on Greener’s neck. The extreme force of the maneuver crushed Greener’s cervical vertebrae, causing the student to fall limp, paralyzed in all extremities.

The plaintiff argued that the forward-flip back take maneuver that Iturralde was attempting, even when done correctly, is an extremely dangerous technique, which should only be used on a highly experienced and skilled opponent who has received extensive training on how to properly receive the technique without sustaining crippling injuries, which Greener, as a beginner white belt, was not.

Iturralde testified he knew his obligations were to be safe and minimize risk for his white belt student, Greener, and that he failed to do so by attempting a dangerous move without any control over his student or himself.

Defendants Iturralde and Del Mar Jiu Jitsu Club denied that Iturralde was negligent or that Iturralde unreasonably increased the risk to the plaintiff over and above those inherent in Brazilian jiu-jitsu sparring.

The defendants claimed the maneuver employed by Iturralde was done properly, is generic to the sport of Brazilian jiu-jitsu, that is commonly used in competition without incident or injury and is not illegal at any level.

Defendants also claimed the doctrine of assumption of the risk barred liability because Greener assumed the particular risks of harm inherent in Brazilian jiu-jitsu sparring by choosing to participate. Defendants went on to argue that contrary to the plaintiff's claims that he was an absolute beginner in the sport of jiu-jitsu, Greener was experienced in the sport, having trained in jiu-jitsu at two other studios and competed in at least five Brazilian jiu-jitsu competitions — two of which he had finished in first place.

Injury:

As a result of the incident, Green sustained a complex traumatic injury to the cervical spine, a comminuted fracture of the C5 transverse process, incomplete quadriplegia and a grade 1 anterolisthesis of C4 and C5.

Greener suffered a C4/5 spinal cord injury as a result of the incident and was hospitalized for months, during which time he was placed on a ventilator, catheterized and underwent numerous surgeries; including an anterior cervical discectomy and fusion of C5 corpectomy, titanium cage, and posterior spinal fusion from C4-5 and C5-6. He also suffered multiple strokes and multiple residual issues, including spasticity, loss of muscle tone, grip strength, total loss of muscles in hamstrings, drop foot, clonus, scissoring gait, no trunk muscles, erectile dysfunction, incontinence, anxiety, PTSD, depression, etc.

Every single aspect of Greener's life was impacted. He went from being a healthy 23-year-old ultra-athlete to being a quadriplegic in the blink of an eye. He has severe physical limitations and pain, as well as severe emotional distress.

Greener was able to return to work after the incident, albeit with pain and many challenges. According to plaintiff's experts, beginning at age 55, Greener's earnings would be reduced by 50% and he would have a complete inability to work by age 60. Before trial, the parties stipulated to $637,959 for the future and past loss of earnings.

Greener will need extensive medical treatment going forward, including: procedural/surgical/intensive intervention, an intrathecal programmable medication pump (Baclofen), posterior hardware removal, epidural steroid injections, radiofrequency ablation/rhizotomy, adjacent level anterior cervical spine decompression/discectomy/fusion/ instrumentation/bone graft of C3-C4 and adjacent level anterior cervical spine decompression/discectomy/fusion/ instrumentation/bone graft of C6-C7.

He will also need home/facility care, diagnostic testing, orthotics/prosthetics, psychosocial services, evaluations/treatment sessions, educational/vocational/avocational, therapeutic equipment needs, social/leisure needs, aids for independent function, drugs/supplies, wheelchair needs, home maintenance and transportation.

The defense did not dispute Greener sustained the injuries; however, they disputed the costs of (and need for certain items of) future treatment and the amount of non-economic damages sought by Greener.

The defense stipulated to the past medical expenses, agreeing that the reasonable and necessary amount was·$1,337,153.23.

Future Medical Expenses:

Plaintiff's Life Care Plan / What Plaintiff Asked Jury to Award: $9,490,153

Defendants' Life Care Plan / What Defense Asked Jury to Award: $654,686

What Jury Awarded: $8,500,000.00

Non-Economic Damages:

Plaintiff: $60m+ (past and future)

Defendants: $1m past and between $1-2 million future

Jury: $36million ($11 million past, $25 million future)

The defense did not dispute that Greener would need care for the rest of his life; rather, they disputed the cost of the treatment and the need for certain items of future treatment in the plaintiff's life care plan, including disagreeing with the need for a Baclofen pain pump to help for spasticity (agreed he needed Baclofen, but said Greener should take the oral version which was cheaper, despite the fact the oral route made plaintiff sick and the pump would likely not make him sick); hardware removal surgery for the hardware in Greener's neck (despite the fact the treating physician who performed); pain treatment for Greener's cervical and lumbar spine, including steroid epidural injections, medial branch blocks, radiofrequency ablation (RFAs); an angioplasty surgery for the stent in his neck due to the stroke if and when that occurs.

Result: The jury awarded damages of $46 million to Greener.

Jack Greener

$ 1,337,153.23 Past Medical Cost

$ 8,500,000 Future Medical Cost

$ 25,000,000 Future Pain Suffering

$ 11,000,000 Past Pain Suffering

$ 637,959 past loss of earnings and future loss of earnings

$ 46,475,112.23 Plaintiff's Total Award

Trial Information:

Judge:	James A. Mangione
Trial Length:	14 days
Trial Deliberations:	2 days
Post Trial:	The defense is appealing the jury's decision. Defense counsel claimed the court committed reversible error by not instructing the jury on the correct law that applies to a primary assumption of the risk case such as this. Defense counsel further claimed that the court admitted on the record that if it gave the jury the correct instruction, the defendants would have prevailed.
Editor's Comment:	This report is based on information that was provided by plaintiff's and defense's counsel.
Writer	Jason Cohen

VerdictSearch

Intellectual Property-PatentsIntellectual Property-Infringement

Type: Verdict-Plaintiff

Amount: $45,418,642

State: Texas

Venue: Federal

Court: United States District Court, Eastern District, Sherman, TX

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: SB IP Holdings LLC v. Vivint Smart Home, Inc., No. 4:20cv886

Date: October 23, 2023

Plaintiff(s):
- SB IP Holdings LLC (, 0 Years)

Plaintiff Attorney(s):
- Gary R. Sorden; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Timothy J. H. Craddock; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- James R. Perkins; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Kumar Vinnakota; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Christopher L. Evans; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Vishal H. Patel; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Brian L. King; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Donald A. Ottaunick; Cole Schotz P.C.; Hackensack NJ for SB IP Holdings LLC
- Ian R. Phillips; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Amanda L. DeGroote; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Arjun Padmanabhan; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC
- Seokin Yeh; Cole Schotz P.C.; Dallas TX for SB IP Holdings LLC

Plaintiff Expert (s):

- David M. Leathers; Economics; Houston, TX called by: Gary R. Sorden, Timothy J. H. Craddock, James R. Perkins, Kumar Vinnakota, Christopher L. Evans, Vishal H. Patel, Brian L. King, Donald A. Ottaunick, Ian R. Phillips, Amanda L. DeGroote, Arjun Padmanabhan, Seokin Yeh
- Robert Akl D.Sc.; Wireless Systems; Denton, TX called by: Gary R. Sorden, Timothy J. H. Craddock, James R. Perkins, Kumar Vinnakota, Christopher L. Evans, Vishal H. Patel, Brian L. King, Donald A. Ottaunick, Ian R. Phillips, Amanda L. DeGroote, Arjun Padmanabhan, Seokin Yeh

Defendant(s):

- Vivint Inc.
- Vivint Smart Home Inc.

Defense Attorney(s):

- David R. Wright; Foley & Lardner LLP; Salt Lake City, UT for Vivint Inc.
- Andy Tindel; MT2 Law Group; Tyler, TX for Vivint Inc.
- Jonathan Michael Thomas; Foley & Lardner LLP; Dallas, TX for Vivint Inc.
- Andrew M. Gross; Foley & Lardner LLP; Chicago, IL for Vivint Inc.
- Michelle Y. Ku; Foley & Lardner LLP; Dallas, TX for Vivint Inc.
- Michelle A. Moran; Foley & Lardner LLP; Milkwaukee, WI for Vivint Inc.
- Michael Manookin; Foley & Lardner LLP; Salt Lake City, UT for Vivint Inc.
- Adam R. Aquino; Foley & Lardner LLP; Salt Lake City, UT for Vivint Inc.
- Hannah L. Andrews; Foley & Lardner LLP; Salt Lake City, UT for Vivint Inc.

Defendant Expert(s):

- Kevin C. Almeroth Ph.D.; Computer Science; Santa Barbara, CA called by: for David R. Wright, Andy Tindel, Jonathan Michael Thomas, Andrew M. Gross, Michelle Y. Ku, Michelle A. Moran, Michael Manookin, Adam R. Aquino, Hannah L. Andrews
- Clarke Nelson CPA; Economics; Salt Lake City, UT called by: for David R. Wright, Andy Tindel, Jonathan Michael Thomas, Andrew M. Gross, Michelle Y. Ku, Michelle A. Moran, Michael Manookin, Adam R. Aquino, Hannah L. Andrews

Facts:

A Cole Schotz legal team convinced a jury that Provo, Utah-based Vivint Inc. infringed on two home security patents held by plaintiff SB IP Holdings LLC, a subsidiary of SkyBell Technologies Inc.

In a trial held before U.S. District Judge Amos L. Mazzant III in the Eastern District of Texas, a jury found Monday that Vivint willfully infringed on two patents.

Vivint had argued that the patents were invalid and that the technology was ineligible for patent. However, the jury disagreed. The damages assessed by the jury for infringement from Nov. 17, 2020, through Oct. 9 were $45.4 million.

The plaintiff's second amended complaint asserted that SB IP's parent company, SkyBell, is an industry leader in video doorbell and home security and in January 2014 was among the first companies to offer the modern video doorbell. Notable licensees within SB IP's patent portfolio include The Chamberlain Group Inc., Heath Co LLC and Bot Home Automation Inc., makers of the Ring video doorbell.

SB IP said the accused products were Vivint's video doorbell products, IP camera products, video recording products and user applications and its backend system.

Vivint's answer and counterclaims denied the allegations, delved into the history of the inventors and raised a defense of inequitable conduct.

Citing some of the SB IP patent claims, Vivint alleged the patent applicant falsely represented to the U.S. Patent and Trademark Office that a patent-in-suit was "pending," even though the applicant knew it had been abandoned for months, in order to improperly obtain priority to earlier-filed applications sharing the same written description, Vivint claimed.

In its counterclaims, Vivint sought a declaratory judgment of non-infringement and invalidity as to all the SkyBell patents and accused SkyBell of infringing on at least two of Vivint's patents.

SkyBell was dismissed as a counter-defendant in November 2021, one year after SB IP Holdings filed its original complaint.

The case went to trial on SB IP's affirmative claims only.

Injury:

SB IP alleged that Vivint willfully infringed two patents. SB IP sought $45,418,641.80 for infringement from Nov. 17, 2020, through Oct. 9, 2023.

Result: The jury found willful infringement of both patents, and it did not find invalidity or ineligibility.

The jury found damages for SB IP of $45,418,641.70 for infringement from Nov. 17, 2020, through Oct. 9, 2023.

There were two damages blanks, one for each patent. The jury wrote $45,418,641.70 in each one, but SB IP was entitled to recover only one of the amounts.

SB IP Holdings LLC

Trial Information:

Judge: Amos L. Mazzant III

Trial Length: 0

Trial Deliberations: 0

Post Trial: Plaintiff filed a motion for enhanced damages. The motion is pending a decision by the court, as are the defense allegations of inequitable conduct by the plaintiff.

Editor's Comment: This report includes reprinted information that was previously published by VerdictSearch's sister publication Texas Lawyer. Additional information was provided by plaintiff's counsel and gleaned from court documents.

Writer John Schneider

Distracted Amazon driver caused intersection crash: suit

Type: Verdict-Plaintiff

Amount: $44,637,147

State: South Carolina

Venue: Dorchester County

Court: Dorchester County, Court of Common Pleas, SC

Injury Type(s):

- *arm*
- *back* - lower back; annular tear; fracture, back; fracture, L3; fracture, back; fracture, L4; fracture, vertebra; fracture, L3; fracture, vertebra; fracture, L4; fracture, vertebra; fracture, transverse process; bulging disc, lumbar
- *head* - headaches; closed head injuries
- *neck* - annular tear; fusion, cervical; fracture, vertebra; fracture, transverse process; disc protrusion, cervical
- *brain* - traumatic brain injury
- *other* - facetectomy; physical therapy; hardware implanted; epidural injections; decreased range of motion
- *wrist* - carpal tunnel syndrome
- *shoulder* - rotator cuff, injury (tear)
- *hand/finger* - hand
- *surgeries/treatment* - discectomy; arthroscopy; laminectomy
- *mental/psychological* - depression; emotional distress; neuropsychological; cognition, impairment; memory, impairment; post-concussion syndrome

Case Type:

- *Motor Vehicle* - Left Turn; Motorcycle; Intersection; Multiple Vehicle
- *Intentional Torts* - Willful Misconduct

Case Name: Shannon Shaw v. Amazon.com Inc., Amazon.com LLC, Amazon.com Services, Inc., Amazon Logistics, Inc., MJV Logistics, LLC, and Kevin Anthony Blekicki, No. 2021-CP-18-02173

Date: December 07, 2023

Plaintiff(s):

- Shannon Shaw, (Male, 43 Years)

Plaintiff Attorney(s):

- Nicholas J. Clekis; Clekis Law Firm; Charleston SC for Shannon Shaw
- William E. Applegate IV; Yarborough Applegate Law Firm, LLC; Charleston SC for Shannon Shaw
- David B. Yarborough Jr.; Yarborough Applegate Law Firm, LLC; Charleston SC for Shannon Shaw
- Alexandra N. Heaton; Yarborough Applegate Law Firm, LLC; Charleston SC for Shannon Shaw

Plaintiff Expert (s):

- Adam C. Schaaf M.D.; Orthopedic Surgery; Charleston, SC called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton
- Sarah Lustig R.N.; Life Care Planning; Mount Pleasant, SC called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton
- Scott Greene S.C.F.E.; Computer Forensics; Tucson, AZ called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton
- Tricia Yount CPA; Economics; Charleston, SC called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton
- Marshall A. White M.D.; Neurology; Mount Pleasant, SC called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton
- Christopher Battista M.D.; Spinal Surgery; Charleston, SC called by: Nicholas J. Clekis, William E. Applegate IV, David B. Yarborough Jr., Alexandra N. Heaton

Defendant(s):

- Amazon.com LLC
- Amazon.com Inc.
- MJV Logistics, LLC
- Amazon Logistics, Inc.
- Kevin Anthony Blekicki
- Amazon.com Services, Inc.

Defense Attorney(s):

- Jeremy A. Stephenson; Wilson Elser; Charlotte, SC for Amazon.com Inc., Amazon.com LLC, Amazon.com Services, Inc., Amazon Logistics, Inc.
- Rebecca A. Rayner; Wilson Elser; Charlotte, NC for Amazon.com Inc., Amazon.com LLC, Amazon.com Services, Inc., Amazon Logistics, Inc.
- Francis M. Ervin II; Rogers Townsend; Charleston, SC for MJV Logistics, LLC, Kevin Anthony Blekicki

Insurers:

- Zurich North America
- Allianz Global Corporate & Specialty
- Marsh LLC

Facts:

On Sept. 24, 2021, plaintiff Shannon Shaw, 43, a maintenance technician, was riding a motorcycle on Orangeburg Road, at its T-intersection with Winningham Road, in Summerville. As Shaw entered the intersection, he struck the side of a van driven by Kevin Anthony Blekicki, of MJV Logistics LLC. Blekicki had been driving on Winningham Road and was attempting to turn left onto Orangeburg Road. Shaw claimed head, neck, shoulder, wrist and back injuries.

Shaw sued Blekicki, MJV Logistics LLC, Amazon.com Inc., and related Amazon entities. At the time of the accident, Blekicki was in the course and scope of his employment as an Amazon delivery associate and driving a van owned by Amazon. Shaw alleged that

Blekicki was negligent in the operation of a vehicle and that Amazon was vicariously liable because it had a right to control Blekicki and MJV.

At trial, Blekicki and MJV stipulated to negligence. Amazon disputed liability by claiming no agency relationship existed between the parties.
According to Shaw's counsel, Amazon created a network of more than 3,000 independently owned small businesses known as delivery service partners that Amazon vets, selects, and contracts with to perform "last mile" deliveries, or the final step in transporting Amazon packages from a hub or fulfillment center to a customer's doorstep. Delivery service partners employ more than 285,000 delivery drivers, called Amazon delivery associates, who help Amazon deliver more than 10 million packages per day. Shaw's counsel argued that, pursuant to state law, a person or entity cannot disclaim liability for work performed on its behalf when that person or entity has the right to control the means and methods of how that work is performed.

Shaw's counsel cited the testimony of an Amazon corporate representative, who confirmed that Amazon assigns the routes, assigns the packages to the routes and requires the use of certain mobile apps that track the delivery associates' driving, including unsafe behaviors like speeding and distracted driving events. Amazon's corporate representative also reportedly confirmed that Amazon retained the right to prohibit the drivers from delivering packages, effectively terminating them.

The plaintiff's counsel presented evidence to demonstrate that Amazon and MJV knew or should have known that Blekicki was a habitually distracted driver and was engaged in distracted driving behaviors at the time of the accident. According to Shaw's counsel, Blekicki had more than 90 counts of distracted driving as recorded by the Amazon-required software and reported to Amazon in his five months of employment before the accident.

According to Shaw's expert in digital forensics, Blekicki's cell phone records on the date of the collision revealed extremely high data usage. The expert testified that the data usage was consistent with viewing high-resolution videos, including at the time of the crash. Per the expert, the forensic imaging of the driver's cell phone also revealed numerous other instances of distracted driving. The expert stated that these instances included posts on Blekicki's social media accounts depicting him filming videos while operating a moving vehicle, access to adult-entertainment websites while on his delivery shift both the day of and day before the collision, and a significant YouTube-watch history on the day of the collision. Blekicki purportedly admitted at trial that he was engaged in distracted driving on the day of the crash, looking at pornography and other videos on his phone while on his delivery route.

Shaw's counsel obtained a spoliation charge related to Blekicki's destruction of his phone, as the plaintiff made an early request for a forensic download of the driver's phone and, at a minimum, the preservation of the phone.

Counsel for Amazon maintained that Blekicki and MJV were independent contractors and, as such, Amazon was not vicariously liable. An Amazon corporate representative testified that Amazon only contracts with these local companies for a specific outcome and Amazon has no control over how the 285,000 drivers achieve that outcome.

Injury:

Shaw was taken by ambulance to a hospital. He was treated and discharged hours later.

Shaw was ultimately diagnosed with a traumatic brain injury, cognitive deficits, headaches, memory loss, depression, post-concussion syndrome, transverse process fractures at L3 and L4, bulging at lumbar intervertebral discs L1-2 and L5-S1, annular tears in his lumbar spine, compression of the spinal cord at T10, a protrusion at C6-7, bilateral carpal tunnel syndrome and a massive left rotator-cuff tear.

Within days of the accident, Shaw sought further medical attention due to complaints of headaches and pain to his neck, left shoulder, wrists and back. He was referred to an orthopedic surgeon, who confirmed Shaw's multiple injuries via MRIs and put him on a course of physical therapy. Additionally, a series of epidural injections were administered to Shaw's cervical and lumbar spine.

Shaw's rotator-cuff tear was arthroscopically repaired within months of the accident. He went on to have additional surgeries, which included a discectomy and fusion at C6-7, a laminectomy and partial facetectomy at T10, and a carpal tunnel release of his dominant right hand. Shaw ultimately had permanent spinal cord stimulators implanted in his cervical and lumbar spine.

Shaw further treated with a neurologist for his traumatic brain injury, which he said resulted in headaches, memory loss, depression, irritability and mood swings. His treatment consisted of Botox injections and medications. At the time of trial, Shaw continued to treat with his neurologist and orthopedic surgeon.

Shaw's spinal surgeon testified that Shaw requires lifelong medical monitoring, as he is at risk for future adjacent segment disease. The surgeon also stated that Shaw'ss spinal cord stimulators are permanent.

According to the plaintiff's neurologist, Shaw's recovery from his traumatic brain injury plateaued and Shaw will experience permanent cognitive deficits going forward.

Shaw and his doctors testified that Shaw's ongoing neck and back pain prevent him from returning to work as a maintenance technician for a telecommunications company, where he earned approximately $100,000 a year. Although he experienced relief from the spinal cord stimulators, Shaw said he continues to have pain and limitations in his neck and back, describing it as good and bad days, and is severely limited in his physical activities. Additionally, witnesses testified regarding their observations of Shaw's change in cognition, personality and mood since the accident.

Shaw sought to recover $453,728.36 in past medical costs, $9,339,251 in future medical costs, $210,761 in past lost wages and $369,469 to $1,477,876 in future lost earnings. Shaw further sought damages for past and future pain and suffering and punitive damages, arguing that the defendants' conduct was willful and wanton.

The defense questioned the legitimacy of Shaw's injuries. The defense maintained that Shaw did not lose consciousness following the accident, had a Glasgow Coma Scale of 14 at the accident scene and a score of 15 at the hospital, had a normal head CT scan and had a same-day discharge. The defense contended the Shaw made a good recovery from his injuries and was not entitled to punitive damages.

Result:

The jury found that Amazon had the right to control MJV or Blekicki. According to the jury, Amazon, MJV and Blekicki acted in a reckless, willful or wanton manner that proximately caused damages to Shaw. The jury determined that Shaw would receive $44,637,147. Amazon is liable for the entire amount because of its control over MJV and Blekicki.

Shannon Shaw

$ 453,728 Past Medical Cost

$ 9,339,251 Future Medical Cost

$ 210,761 Past Lost Earnings

$ 1,108,407 Future Lost Earnings

$ 30,000,000 punitive damages against Amazon

$ 3,300,000 noneconomic damages

$ 50,000 punitive damages against MJV

$ 175,000 punitive damages against Blekicki

$ 44,637,147 Plaintiff's Total Award

Trial Information:

Judge: Maite Murphy

Demand: n/a

Offer: $1,233,114.48

Trial Length: 4 days

Trial Deliberations: 4 hours

Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Doctor failed to prescribe prophylactic antibiotic: lawsuit

Type: Verdict-Mixed

Amount: $44,490,346

Actual Award: $17,796,138

State: Kentucky

Venue: Jefferson County

Court: Jefferson County Circuit Court, KY

Injury Type(s):
- *other* - death; infection; conscious pain and suffering
- *pulmonary/respiratory* - hypoxia; pneumonia; respiratory

Case Type:
- *Medical Malpractice* - Hospital; Delayed Diagnosis; Delayed Treatment; Failure to Consult; Failure to Diagnose; Negligent Treatment; Prescription and Medication
- *Wrongful Death* - Survival Damages

Case Name: Ben Phelps, Administrator of the Estate of Ashley Nicole Phelps, deceased, individually, and on behalf of Mishka, Amelie, and Hadassah Phelps v. University Medical Center, Inc. d/b/a University of Louisville Hospital d/b/a James Graham Brown Cancer Center, Robert Emmons, M.D. and University of Louisville Physicians, Inc., No. 20-CI-888

Date: September 07, 2023

Plaintiff(s):
- Ben Phelps, (, 0 Years)
- Amelie Phelps, (, 0 Years)
- Mishka Phelps, (, 0 Years)
- Hadassah Phelps, (, 0 Years)
- Estate of Ashley Nicole Phelps, (Female, 30 Years)

Plaintiff Attorney(s):

- Savannah Nolan-Young; Gardner Law, PLLC; Louisville KY for Ben Phelps,, Mishka Phelps,, Amelie Phelps,, Hadassah Phelps,, Estate of Ashley Nicole Phelps
- Chadwick Gardner; Gardner Law, PLLC; Louisville KY for Ben Phelps,, Mishka Phelps,, Amelie Phelps,, Hadassah Phelps,, Estate of Ashley Nicole Phelps
- Mark D. Alcott; Harlin Parker; Bowling Green KY for Ben Phelps,, Mishka Phelps,, Amelie Phelps,, Hadassah Phelps,, Estate of Ashley Nicole Phelps
- Justin L. Duncan; Harlin Parker; Bowling Green KY for Ben Phelps,, Mishka Phelps,, Amelie Phelps,, Hadassah Phelps,, Estate of Ashley Nicole Phelps
- John "Jake" Grey II; Gardner Law, PLLC; Louisville KY for Ben Phelps,, Mishka Phelps,, Amelie Phelps,, Hadassah Phelps,, Estate of Ashley Nicole Phelps

Plaintiff Expert (s):

- Robert J. Soiffer M.D.; Oncology; Boston, MA called by: Savannah Nolan-Young, Chadwick Gardner, Mark D. Alcott, Justin L. Duncan, John "Jake" Grey II
- William T. Baldwin Ph.D.; Economics; Lexington, KY called by: Savannah Nolan-Young, Chadwick Gardner, Mark D. Alcott, Justin L. Duncan, John "Jake" Grey II

Defendant(s):

- Robert Emmons
- University Medical Center Inc.
- University of Louisville Physicians Inc.

Defense Attorney(s):

- James P. Grohmann; O'Bryan, Brown & Toner, PLLC; Louisville, KY for University of Louisville Physicians Inc.
- Ashley J. Butler; Stoll Keenon Ogden PLLC; Bowling Green, KY for Robert Emmons
- Clay M. Stevens; Napier Gault Schupbach & Stevens, PLC; Louisville, KY for University Medical Center Inc.

Defendant Expert(s):

- Ciara Shaver M.D., Ph.D.; Pulmonology; Nashville, TN called by: for James P. Grohmann
- Amanda F. Cashen M.D.; Oncology; St. Louis, MO called by: for Ashley J. Butler
- Daniel R. Kaul M.D.; Infectious Diseases; Ann Arbor, MI called by: for James P. Grohmann

Insurers:

- Kentuckiana Medical Reciprocal Risk Retention Group

Facts:

In May 2018, plaintiff's decedent Ashley Phelps, 30, a therapist and social worker, underwent a stem-cell transplant to treat her recurrence of Hodgkin's lymphoma. Hematologist Dr. Robert Emmons performed the transplant, which left Phelps with a compromised immune system, and devised a post-transplant treatment plan. He prescribed Phelps several medications, but did not prescribe any prophylactic medications used to prevent pneumocystis pneumonia (PCP).

The treatment plan did include several cycles of an antibody drug conjugate, which further suppresses the immune system. Phelps received her first post-transplant dose of this conjugate in June 2018.

Later in June, Phelps developed tachycardia, headaches, abdominal pain, nausea and cramps. She saw her treating oncologist, Dr. Vidya Seshadri, who prescribed steroids

On July 15, 2018, Phelps presented to a hospital and complained of shortness of breath. She underwent a chest CT scan that showed abnormal findings. Phelps then saw Emmons on July 26 due to continued shortness of breath and dyspnea. Emmons did not consult a pulmonologist.

Phelps made similar complaints during her 100-day checkup on Aug. 17. Emmons again did not consult a pulmonologist.

Two days later, Phelps went to the emergency room. She had a cough, tachycardia and intermittent hypoxia. She was ultimately diagnosed with PCP and died a few weeks later.

Phelps' widower, Ben Phelps, acting individually, as the administrator of his late wife's estate and on behalf of the couple's three children, sued Emmons and his employer, University of Louisville Physicians Inc. The plaintiffs also sued University Medical Center. The lawsuit claimed Emmons was negligent in his failure to prescribe a PCP prophylaxis. The lawsuit further claimed that University of Louisville Physicians was vicariously liable for Emmons' actions and that Emmons was an apparent agent of the hospital.

The plaintiffs also initially sued Seshadri. The claim against Seshadri settled prior to trial, but she was listed on the verdict form for liability apportionment.

Plaintiffs' counsel contended that Emmons should have prescribed PCP prophylaxis. Plaintiffs' counsel claimed the hospital's own guidelines called for stem-cell transplant patients to receive PCP prophylaxis, and Emmons was the only cancer doctor at the hospital who did not follow this guideline. Counsel further argued that the instruction label for the antibody drug conjugate Phelps received also called for patients to take a PCP prophylaxis.

Plaintiffs' counsel additionally argued that Emmons should have requested Phelps' abnormal CT scan and consulted with a pulmonologist during the July 26 and Aug. 17 visits. Counsel claimed that if Emmons had appreciated the CT scan, he would have suspected Phelps had PCP since he knew she was not taking a PCP prophylaxis. Counsel said this would have led to an earlier diagnosis, which could have saved Phelps' life.

At trial, plaintiffs' counsel did not assign any blame to Seshadri. Plaintiffs' counsel maintained that since Emmons' treatment put Phelps in an immunocompromised state, it was his job to protect her from infections that could occur while she was in that state. Counsel also claimed that Emmons should have told Seshadri that he did not give the patient PCP prophylaxis and that this conversation could have led to an earlier diagnosis. Counsel additionally argued that the consent form signed by Phelps did not definitively say Emmons was not an agent of the hospital.

The defense argued that the hospital guidelines in question were draft guidelines rather than an official policy. The defense further contended that choosing whether to prescribe a PCP prophylaxis is up to the doctor's discretion. The defense concluded that Emmons properly assessed the situation and made the judgment call to not prescribe the PCP prophylaxis. Defense counsel also noted that a PCP prophylaxis can cause an allergic reaction or other side effects.

Defense counsel additionally blamed Seshadri for Phelps' death. The defense claimed Seshadri's decision to administer steroids further suppressed Phelps' immune system and that Emmons did not know the patient was receiving steroids. Plaintiffs' counsel, however, maintained that Seshadri did tell Emmons about the steroids.

For the apparent agency claim, University Medical Center maintained that Emmons' nametag indicated he was an employee of University of Louisville Physicians rather than of the hospital.

Injury:

Phelps presented to Greenview Regional Hospital on Aug. 19, 2018 with a cough and intermittent hypoxia. She was admitted to intensive care and went into respiratory failure. Her condition further deteriorated, so she was transported to another hospital on Aug. 23. Tests there confirmed she had PCP. She received antibiotics, but ultimately had to be placed on a ventilator.

Phelps was then sent to another hospital for extracorporeal membrane oxygenation. Despite the treatment, she did not recover from her infection and was taken off life support on Sept. 5. She was survived by her husband and three minor children, Mishka, Amelie, and Hadassah Phelps.

The estate sought recovery of $590,652.74 in past medical expenses, $1,399,693 in lost earning capacity and $10 million for Ashley Phelps' conscious pain and suffering from Aug. 19 until her death. Ben Phelps also sought recovery of $10 million damages for the loss of the love, affection, companionship, society and consortium of his wife. The children each sought recovery of $10 million in damages for the loss of the love, affection, guidance, care, comfort and protection of their mother.

The defense disputed the amount of damages.

Result: The jury determined that Emmons failed to exercise the degree of care and skill expected of a reasonably competent hematologist and that Seshadri failed to exercise the degree of care and skill expected of a reasonably competent oncologist. The jury additionally determined that the doctors' failures caused Phelps' death. It assigned 60 percent of the liability to Seshadri and 40 percent to Emmons. The jury awarded the plaintiffs $44,490,345.74. The comparative-fault reduction produced a net verdict of $17,796,138.30.

The jury ruled in favor of the hospital on the agency question.

Estate of Ashley Phelps

$ 590,652.74 Past Medical Cost

$ 1,399,693 lost earning capacity

$ 5,000,000 conscious pain and suffering

$ 6,990,345.74 Plaintiff's Total Award

Hadassah Phelps

$ 10,000,000 loss of love, affection, guidance, care, comfort and protection

$ 10,000,000 Plaintiff's Total Award

Amelie Phelps

$ 10,000,000 loss of love, affection, guidance, care, comfort and protection

$ 10,000,000 Plaintiff's Total Award

Mishka Phelps

$ 10,000,000 loss of love, affection, guidance, care, comfort and protection

Ben Phelps

$ 7,500,000 loss of love, affection, companionship, society and consortium

$ 7,500,000 Plaintiff's Total Award

Trial Information:

Judge:	Eric J. Haner
Trial Length:	2 weeks
Trial Deliberations:	0
Jury Vote:	10-2 on Emmons' liability; 11-1 on conscious pain and suffering award and award to Ben Phelps; 12-0 on Seshadri's liability, agency question, liability apportionment and other damages awards
Post Trial:	Defense counsel for Emmons and University of Louisville Physicians filed motions for a new trial and judgment notwithstanding the verdict. Plaintiff's counsel also moved for JNOV on its agency claim against the hospital and on the determination that Seshadri was partly responsible for Phelps' death. Plaintiff's counsel argued that there was not enough proof of any liability by Seshadri. All of these motions were denied.
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.
Writer	Melissa Siegel

Nurse claimed comminuted neck fracture from crash

Type: Verdict-Plaintiff

Amount: $43,825,000

State: Illinois

Venue: Cook County

Court: Cook County Circuit Court, IL

Injury Type(s):
- *neck* - fracture, neck; fusion, cervical; fracture, cervical
- *other* - neuropathy; spasticity; physical therapy; comminuted fracture; epidural injections; decreased range of motion
- *foot/heel* - foot drop (drop foot); drop foot
- *neurological* - nerve damage/neuropathy; neurological impairment; neuroma
- *sensory/speech* - vocal cord, damage
- *surgeries/treatment* - laminectomy; open reduction; internal fixation
- *paralysis/quadriplegia* - tetraplegia; paralysis, partial

Case Type:
- *Motor Vehicle* - Rear-ender; Intersection; Tractor-Trailer; Multiple Vehicle

Case Name: Cynthia Kroft and Mark Kroft v. Viper Trans, Inc., an Illinois corp.; PR Rental, Inc., an Illinois corp.; Predrag Radisavljevic, an Illinois resident, individually and as employee, agent and/or servant of Viper Trans, Inc. and PR Rental, Inc.; Kraft Food Groups, Inc.; Kraft Heinz Foods Company; Land Transportation (Division of Evans Delivery Company, Inc.); and Evans Delivery Company, Inc., No. 16 L 09466

Date: July 14, 2023

Plaintiff(s):
- Mark Kroft , (Male, 0 Years)
- Cynthia Kroft, (Female, 50 Years)

Plaintiff Attorney(s):
- Kenneth J. Allen; Allen Law Group; Valparaiso IN for Cynthia Kroft,, Mark Kroft
- Otto J. Shragal; Allen Law Group; Valpraiso IN for Cynthia Kroft,, Mark Kroft

Plaintiff Expert (s):

- Gary M. Yarkony M.D.; Life Care Planning; Elgin, IL called by: Kenneth J. Allen, Otto J. Shragal
- Stan V. Smith Ph.D.; Economics; Chicago, IL called by: Kenneth J. Allen, Otto J. Shragal
- Anita K. Rao M.D.; Pain Management; Chesterton, IN called by: Kenneth J. Allen, Otto J. Shragal
- Brian T. Damitz D.P.M.; Podiatry; Portage, IN called by: Kenneth J. Allen, Otto J. Shragal
- Nirav N. Thakkar M.D.; Otolaryngology; Orland Park, FL called by: Kenneth J. Allen, Otto J. Shragal
- Jeffrey P. Gatz M.D.; Primary Care Physician; Valparaiso, IN called by: Kenneth J. Allen, Otto J. Shragal

Defendant(s):

- PR Rental, Inc.
- Viper Trans, Inc.
- Land Transportation
- Kraft Food Groups, Inc.
- Predrag Radisavljevic
- Kraft Heinz Foods Company
- Evans Delivery Company, Inc.

Defense Attorney(s):

- Michael J. Mullen; Kralovec & Marquard, Chartered; Chicago, IL for Viper Trans, Inc.
- Kevin C. Schiferl; Frost Brown Todd; Indianapolis, IN for Viper Trans, Inc.
- Shimon B. Kahan; LaBarge, Campbell, Lyon & Kahan, LLC; Chicago, IL for PR Rental, Inc., Predrag Radisavljevic
- Adam S. Ira; Frost Brown Todd; Indianapolis, IN for Viper Trans, Inc.

Defendant Expert(s):

- Gary R. Skoog Ph.D.; Economics; Glenview, IL called by: for Michael J. Mullen, Kevin C. Schiferl, Shimon B. Kahan, Adam S. Ira
- Caitlin Mitchell B.S.N., R.N.; Life Care Planning; San Francisco, CA called by: for Michael J. Mullen, Kevin C. Schiferl, Shimon B. Kahan, Adam S. Ira

Facts:

On May 11, 2016, plaintiff Cynthia Kroft, a nurse in her early 50s, was driving on Gateway Boulevard, in Chesterton, Indiana. When she was at the intersection with State Road 49, her vehicle was rear-ended by a tractor-trailer operated by Predrag Radisavljevic. Kroft suffered a neck fracture, resulting in tetraplegia.

Kroft sued Radisavljevic, Radisavljevic's employer, Viper Trans Inc., Radisavljevic's company, PR Rental Inc., and the companies that were part of Radisavljevic's shipping chain, Kraft Food Groups Inc., Kraft Heinz Foods Co. LLC, Land Transportation and Evans Delivery Co. Inc. Kroft alleged that Radisavljevic was negligent in the operation of a vehicle and the other defendants were liable for Radisavljevic's actions.

Prior to trial, Land Transportation and Evans Delivery settled with Kroft for undisclosed amounts. The Kraft defendants were dismissed from the case prior to trial.

In 2021, a jury found Radisavljevic, Viper Trans and PR Rental jointly and severally liable, and awarded the plaintiffs $43,051,020.38. The defendants appealed the verdict. A new trial was then held on the issues of causation and damages.

Injury:

Kroft was taken by ambulance to a hospital, where she was admitted. She was diagnosed with a comminuted cervical fracture of the C5 vertebra, which resulted in neuropathy and incomplete tetraplegia on the left side of her body.

Kroft underwent an open reduction with internal fixation. She was later diagnosed with neuroma, foot drop, and damage to her vocal cords due to the neck surgery.

On May 25, 2016, Kroft was transferred to an inpatient rehabilitation facility, where she treated for approximately one month. Following her discharge, she treated with outpatient physical therapy and received multiple epidural injections.

In the spring of 2017, about one year post-accident, Kroft underwent a laminectomy and fusion in her cervical spine. After the procedure, Kroft treated with a course of physical therapy. At the time of trial, she continued to treat with pain medication.

In their respective testimonies, Kroft's pain-management doctor and podiatrist opined that the accident caused Kroft to suffer permanent structural damage and nerve damage to her cervical spine. They also opined that Kroft is at risk for adjacent segment disease and will require future treatment consisting of surgery, pain management, imaging studies and physical therapy.

Kroft's otolaryngologist opined that Kroft suffered damage to her vocal cords as a result of the surgery.

Kroft testified about how her injuries ended her 25-year career as a nurse, resulting in permanent disability. In addition to ongoing neck pain and limited range of motion, she claimed she experiences neuropathic pain and some spasticity on the left side of her body, including her left, nondominant hand. Kroft further discussed how her impairments have restricted her in her activities of daily living and social life. Her husband testified about how he has become his wife's home health aide.

Kroft sought recovery of $1,144,020.38 in past medical costs, $7 million in future medical costs, $407,000 in lost wages and $1 million in future lost wages. She also sought damages for past and future pain and suffering, disability, disfigurement and emotional distress. Her husband, Mark Kroft, sought damages for his alleged loss of consortium.

Defense counsel maintained that Kroft, despite her injuries, made a good recovery.

The defense's economics and life-care planning experts opined that Kroft did not need the extent of future treatment she alleged and that her future costs only amounted to $1,447,962.

Result: The jury found Radisavljevic, Viper Trans and PR Rental jointly and severally liable. It determined that the Krofts' damages totaled $43,825,000.

Mark Kroft

$ 800,000 Past Loss of Consortium

$ 1,700,000 Future Loss of Consortium

$ 800,000 past loss of services

$ 1,700,000 future loss of services

$ 5,000,000 Plaintiff's Total Award

Cynthia Kroft

$ 1,200,000 Past Medical Cost

$ 9,500,000 Future Medical Cost

$ 450,000 Past Lost Earnings

$ 675,000 Future Lost Earnings

$ 5,000,000 Future Pain Suffering

$ 3,000,000 Past Pain Suffering

$ 10,000,000 future loss of a normal life

$ 3,000,000 future emotional distress

$ 2,000,000 disfigurement

$ 3,000,000 past loss of a normal life

$ 1,000,000 past emotional distress

$ 38,825,000 Plaintiff's Total Award

Trial Information:

Judge:	Joan E. Powell
Demand:	n/a
Offer:	$1 million (policy limit)
Trial Length:	9 days
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Suit: Defendants flew clients to luxurious spots, gave other kickbacks

Type: Verdict-Plaintiff

Amount: $43,694,642

Actual Award: $216,675,249

State: Minnesota

Venue: Federal

Court: U.S. District Court, District of Minnesota, MN

Case Type:
- *Fraud*
- *Government* - False Claims Act

Case Name: United States of America ex rel. Kipp Fesenmaier v. Sightpath Medical, Inc., TLC Vision Corporation, The Cameron-Ehlen Group, Inc., dba Precision Lens, and Paul Ehlen, No. 0:13-cv-03003-WMW-DTS

Date: February 27, 2023

Plaintiff(s):
- United States of America (, 0 Years)

Plaintiff Attorney(s):
- Jennifer Marie Verkamp; Morgan Verkamp LLC; Cincinnati OH for United States of America
- Chad A. Blumenfield; United States Attorney's Office; Minneapolis MN for United States of America
- Bahram Samie; United States Attorney's Office; Minneapolis MN for United States of America
- Andrew Tweeten; United States Attorney's Office; Minneapolis MN for United States of America
- Chandra Napora; Morgan Verkamp LLC; Cincinnati OH for United States of America
- Sonya Rao; Morgan Verkamp LLC; Cincinnati OH for United States of America

Defendant(s):

- Paul Ehlen
- TLC Vision Corporation
- Sightpath Medical, Inc.
- The Cameron-Ehlen Group, Inc.

Defense Attorney(s):

- Thomas Beimers; Hogan Lovells; Minneapolis, MN for The Cameron-Ehlen Group, Inc.
- Elizabeth (Liz) Alice Och; Hogan Lovells; Denver, CO for The Cameron-Ehlen Group, Inc.
- Sara Silva; Silva Kettlewell & Pignatelli LLP; Boston, MA for The Cameron-Ehlen Group, Inc.
- Joseph T. Dixon III; Fredrikson & Byron P.A.; Minneapolis, MN for Paul Ehlen
- Alethea M. Huyser; Fredrikson & Byron P.A.; Minneapolis, MN for Paul Ehlen

Facts:

In 2013, relator Kipp Fesenmaier, whose claims were intervened by plaintiff United States of America, was a former worker of the eye-care industry. Fesenmaier claimed Paul Ehlen and the medical products company he co-founded, Precision Lens, submitted false claims for payment to Medicare, Medicaid and other federally funded health-care programs. Fesenmaier said the claims were for cataract surgeries performed as a result of illegal financial relationships between Ehlen/Precision Lens and their referral sources.

The federal government sued Ehlen and Precision Lens. The government alleged the defendants violated the False Claims Act and the Anti-Kickback Statute. It also sued Sightpath Medical Inc. and TLC Vision Corp., both of which settled prior to trial.

Plaintiff's counsel argued that Ehlen and Precision Lens used fraudulent schemes to increase the use of their products and services in surgeries by systematic payment of kickbacks to physicians in the form of entertainment, travel, sham consulting agreements and other illegal incentives. According to the federal government, the defendants transported physicians to luxury vacation destinations on private jets. These included trips to New York City to see a Broadway musical, the NCAA football national championship game in Miami, Fla., and the Masters golf tournament in Augusta, Ga. Plaintiff's counsel maintained that Ehlen and his company also sold frequent-flyer miles to their physician customers at a significant discount, enabling the physicians to take personal and business trips at well below fair market value.

Plaintiff's counsel further asserted that Precision Lens maintained a fund, referred to internally at Precision Lens as a secret fund or slush fund, in furtherance of its kickback scheme. Precision Lens allegedly used money from the secret fund to finance multiple physician trips.

The defense denied the allegations. The defense maintained that Ehlen and Precision Lens' business practices were not in violation of the False Claims Act.

Injury: The federal government sought to damages under the False Claims Act and the Anti-Kickback Statute.

Result: The jury found that Ehlen and Precision Lens paid kickbacks to ophthalmic surgeons to induce their use of the defendants' products in cataract surgeries reimbursed by Medicare. The jury found that Ehlen and Precision Lens' kickbacks caused the submission of 64,575 false claims to the Medicare program between 2006 and 2015. The jury determined that damages totaled $43,694,641.71.

Pursuant to the False Claims Act, the $43,694,641.71 verdict was trebled to $131,083,925.13. Additionally, the court determined $358,445,780 in statutory penalties, which was added to the trebled damages, for a total of $489,529,705.13. The amount was then molded to $487,048,705.13 to reflect the $2,481,000 from a previous settlement with Sightpath Medical.

United States of America Fesenmaier

United States of America

Trial Information:

Judge: Wilhelmina M. Wright

Trial Length: 6 weeks

Trial Deliberations: 0

Post Trial: The court granted the defendants' motion for judgment as a matter of law regarding the claim related to a trip funded by Precision Lens, in which a physician was flown to New York City. The court also granted the defendants' motion regarding the penalties imposed upon the defendants under the False Claims Act, determining that the penalties constitute a violation of the Excessive Fines Clause. Thus, the court entered judgment in the amount of $216,675,248.55.

Editor's Comment: This report is based on information that was gleaned from court documents. Plaintiff's and defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

NFL Player: Surgeon's negligence ended his career

Type: Verdict-Plaintiff

Amount: $43,500,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *leg*
- *knee* - medial meniscus, tear
- *other* - adhesions; physical therapy; hardware implanted; decreased range of motion
- *surgeries/treatment* - osteotomy; arthroscopy; debridement

Case Type:
- *Medical Malpractice* - Misdiagnosis; Failure to Treat; Orthopedic Surgeon; Orthopedic Surgery; Failure to Diagnose; Post-Operative Care

Case Name: Christopher Maragos v. James P. Bradley, M.D., UPMC Community Medicine, Inc. and Reconstructive Orthopaedic Associates, II, P.C., No. 191100972

Date: February 13, 2023

Plaintiff(s):
- Christopher Maragos, (Male, 30 Years)

Plaintiff Attorney(s):
- Dion G. Rassias; The Beasley Firm LLC; Philadelphia PA for Christopher Maragos
- Jill Johnston; The Beasley Firm LLC; Philadelphia PA for Christopher Maragos
- Peter J. Flowers; Meyers & Flowers Trial Attorneys; Chicago IL for Christopher Maragos
- Frank V. Cesarone; Meyers & Flowers Trial Attorneys; St. Charles IL for Christopher Maragos

Plaintiff Expert (s):
- Matthew L. Jimenez M.D.; Orthopedic Surgery; Morton Grove, IL called by: Dion G. Rassias, Peter J. Flowers, Frank V. Cesarone
- Carolyn M. Boltin M.D.; Radiology; New York, NY called by: Dion G. Rassias, Peter J. Flowers, Frank V. Cesarone

Defendant(s):

- James P. Bradley M.D.
- UPMC Community Medicine, Inc.
- Reconstructive Orthopaedic Associates, II, P.C.

Defense Attorney(s):

- John C. Conti; Dickie, McCamey & Chilcote, P.C.; Pittsburgh, PA for James P. Bradley M.D., UPMC Community Medicine, Inc.
- Melissa L. Mazur; O'Brien & Ryan, LLP; Plymouth Meeting, PA for Reconstructive Orthopaedic Associates, II, P.C.

Defendant Expert(s):

- Mark R. Slough, J.D., MBA; Football; Scottsdale, AZ called by: for Melissa L. Mazur,
- Neal S. ElAttrache M.D.; Orthopedic Surgery; Los Angeles, CA called by: for Melissa L. Mazur,
- Walter R. Lowe M.D.; Orthopedic Surgery; Houston, TX called by: for John C. Conti, , ,
- Daniel E. Cooper M.D.; Orthopedic Surgery; Dallas, TX called by: for John C. Conti, , ,

Facts:

On Nov. 8, 2017, plaintiff Christopher Maragos, 30, a professional football player for the Philadelphia Eagles, underwent a right knee arthroscopy by Dr. James Bradley, an orthopedic surgeon in Pittsburgh. Maragos claimed Bradley was negligent during and after the surgery, ending Maragos' career in the National Football League.

Maragos sued Bradley, the Rothman Institute and UPMC Community Medicine Inc., which owned the hospital where Maragos underwent surgery. Maragos alleged the defendants failed to diagnose and repair the root tear in Maragos' right medial meniscus, which prematurely ended Maragos' football career.

UPMC was dismissed prior to trial.

On Oct. 12, 2017, Maragos suffered a right knee injury during an NFL game. Specifically, he claimed he suffered a Grade 2 sprain of the posterior cruciate ligament, a Grade 1 sprain of the anterior cruciate and medial collateral ligaments, a Grade 2 sprain of the conjoined tendon, a high-grade partial tear of the lateral collateral ligament and a complex tear of the posterior root attachment of the medial meniscus. Maragos alleged that Bradley and the Rothman staff misdiagnosed some of his injuries, including the complex tear of the posterior root attachment of the medial meniscus.

When Maragos first presented to Bradley on Nov. 7, the physician proposed a treatment plan that consisted of a right knee arthroscopy with evaluation, versus repair of the medial meniscus and reconstruction of the posterior cruciate ligament using an Achilles allograft. The posterolateral corner and the lateral cruciate ligament would be assessed at the time of surgery. Maragos said he was told he would not be able to play football for at least a season.

On Nov. 8, 2017, Maragos underwent a right knee arthroscopy by Bradley. Based on the arthroscopic examination, Bradley reportedly elected not to surgically operate on the medial meniscus. Maragos tolerated the surgery well and was subsequently discharged on Nov. 11.

However, Bradley allegedly did nothing to treat, repair or otherwise address the posterior root tear of the medial meniscus, which he allegedly ignored and completely misdiagnosed. According to Maragos' counsel, the physician's postoperative care and treatment plan were consistent with a plan for a patient who underwent both a posterior cruciate ligament reconstruction and repair of a medial meniscal root with extrusion, which caused permanent and irreparable damage to Maragos' knee and ended his professional football career.

Maragos' expert in orthopedic surgery testified that Bradley breached the standard of care by failing to diagnose and repair the root tear in Maragos' right medial meniscus. Maragos' expert in radiology testified that the tear was evident on an MRI and should have been diagnosed accordingly.

Maragos' expert in orthopedic surgery further testified that Bradley and Rothman failed to recommend any treatment for the right medial meniscus. Instead, the expert stated, the physician advanced Maragos' rehabilitation program and activities to the point of permitting full-speed running and drills on dry land. The expert discussed how the improper physical therapy put an inordinate amount of stress on Maragos' knee and cartilage, which were suffering an uncorrected root tear and extrusion to the medial meniscus. According to the expert, Maragos' right knee condition worsened due to Bradley's failure to repair this medial meniscus injury, as well as the rehabilitation activities ordered by Bradley and overseen and administered by Rothman.

Bradley's counsel argued that Maragos progressed exceedingly well throughout his postoperative rehabilitation. According to the defense, nowhere in the rehabilitation records from late December 2017 through early May 2018 is there evidence of reported pain, grinding, clicking or catching.

On May 10, 2018, Maragos reinjured his right knee while walking into the weight room at the Eagles' training center. On May 15, Maragos presented to Bradley with complaints of some grinding. An MRI was obtained. Bradley reported that it showed a posterior root tear of the medial meniscus, which, according to the defense, was the first time it had appeared on an imaging study.

Bradley's experts in orthopedic surgery testified that Bradley's care and treatment met or exceeded the standard of care. The experts concluded that Bradley performed the proper surgery and ordered appropriate postoperative rehabilitation that provided Maragos with the best chance to return to the NFL. Counsel for Rothman asserted that Maragos suffered a career-ending injury that was not due to the actions of the defendants.

Rothman's expert in sports medicine testified that Rothman's management and care was within the standard of care. Per the expert, Rothman timely performed an MRI, recognized Maragos' injury and made arrangements for him to see Bradley, who appropriately treated Maragos and established a treatment protocol with the goal of him returning to the NFL. The expert concluded that the protocol was appropriately implemented by the Rothman physicians, who kept Bradley informed of Maragos' progress.

Injury:

After it was determined that Maragos had suffered a tear of the right medial meniscal root with extrusion, he came under the care of another surgeon, who determined that he required further surgery. In December 2018, Maragos underwent surgery that consisted of arthroscopic lysis of adhesions of the suprapatellar pouch; a medial gutter and retropatellar fat pad; arthroscopic debridement with removal of a bioabsorbable screw from the femur with debridement of tibial and femoral posterior cruciate ligament tunnels and tunnel bone grafting; arthroscopic medial meniscus root repair; and a proximal tibial biplanar opening wedge osteotomy with allograft bone graft.

Following the procedure, Maragos treated with additional physical therapy, but was unable to return to his pre-injury status, which forced him to stop playing professional football altogether. He retired in July 2019 after playing seven seasons in the NFL.

Maragos testified about the emotional toll of having to end his career due to the alleged wrongdoing of a doctor, as opposed to an injury. He discussed the commitment and sacrifice to play at an elite level for so many years and the difficulty of accepting that he will never play again, despite knowing that he had several good seasons left in him. Maragos, who has difficulty walking due to his right knee, said he is exploring additional treatment, including a knee replacement.

Maragos sought to recover future lost earnings, as Maragos intended to play professional football for another three years, plus damages for past and future pain and suffering.

The defense maintained that Maragos' limitations are a result of his initial injury and are unrelated to the treatment administered by Bradley and Rothman. The defense contended that Maragos suffered an unfortunate career-ending injury and that he was not entitled to any damages.

Result:

The jury attributed 67 percent liability to Bradley and 33 percent liability to Rothman. It determined that Maragos' damages totaled $43.5 million.

Christopher Maragos

Trial Information:

Judge:	Charles J. Cunningham III
Trial Length:	2 weeks
Trial Deliberations:	0
Post Trial:	The defendants filed a motion to appeal.
Editor's Comment:	This report is based on an article published by The Legal Intelligencer, an ALM publication. Additional information was gleaned from court documents. Plaintiff's counsel declined to contribute. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Plaintiff alleged infringement on garage door opener patent

Type: Verdict-Plaintiff

Amount: $43,400,000

State: Texas

Venue: Federal

Court: United States District Court, Eastern District, Marshall, TX

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: The Chamberlain Group, Inc. v. Overhead Door Corporation and GMI Holdings Inc., No. 2:21-cv-84

Date: January 27, 2023

Plaintiff(s):
- The Chamberlain Group Inc. (, 0 Years)

Plaintiff Attorney(s):
- Ruffin B. Cordell; Fish & Richardson; Washington DC for The Chamberlain Group Inc.
- Melissa R. Smith; Gillam & Smith LLP; Marshall TX for The Chamberlain Group Inc.
- Benjamin C. Elacqua; Fish & Richardson; Houston TX for The Chamberlain Group Inc.
- Betty H. Chen; Fish & Richardson; Redwood City CA for The Chamberlain Group Inc.

Plaintiff Expert (s):
- M. Brent Buescher Jr.; Engineering; Wooster, OH called by: Ruffin B. Cordell, Melissa R. Smith, Benjamin C. Elacqua, Betty H. Chen
- Brent A. Rauscher; Software; Keller, TX called by: Ruffin B. Cordell, Melissa R. Smith, Benjamin C. Elacqua, Betty H. Chen
- Edward T. Laird; Engineering; Oak Brook, IL called by: Ruffin B. Cordell, Melissa R. Smith, Benjamin C. Elacqua, Betty H. Chen
- Thomas W. Britven CPA; Patent Damages; Houston, TX called by: Ruffin B. Cordell, Melissa R. Smith, Benjamin C. Elacqua, Betty H. Chen

Defendant(s):

- GMI Holdings Inc.
- Overhead Door Corp.

Defense Attorney(s):

- David K. Callahan; Latham & Watkins LLP; Chicago, IL for Overhead Door Corp., GMI Holdings Inc.
- Michael C. Smith; Scheef & Stone, LLP; Marshall, TX for Overhead Door Corp., GMI Holdings Inc.
- E. Leon Carter; Carter Arnett; Dallas, TX for Overhead Door Corp., GMI Holdings Inc.
- Susan Y. Tull; Latham & Watkins LLP; Washington, DC for Overhead Door Corp., GMI Holdings Inc.
- S. Giri Pathmanaban; Latham & Watkins LLP; Austin, TX for Overhead Door Corp., GMI Holdings Inc.

Defendant Expert(s):

- Leroy G. Krupke; Engineering; Carrollton, TX called by: for David K. Callahan, Michael C. Smith, E. Leon Carter, Susan Y. Tull, S. Giri Pathmanaban
- Steven B. Leeb Ph.D.; Electrical; Cambridge, MA called by: for David K. Callahan, Michael C. Smith, E. Leon Carter, Susan Y. Tull, S. Giri Pathmanaban
- Barbara Kelkhoff; Engineering; Elmhurst, IL called by: for David K. Callahan, Michael C. Smith, E. Leon Carter, Susan Y. Tull, S. Giri Pathmanaban
- Michael E. Tate; Patent Damages; Chicago, IL called by: for David K. Callahan, Michael C. Smith, E. Leon Carter, Susan Y. Tull, S. Giri Pathmanaban

Facts:

In March 2021, plaintiff The Chamberlain Group claimed that Overhead Door Corp. and its subsidiary GMI Holdings Inc. infringed a patent owned by the plaintiff. Overhead Door is a competitor of Chamberlain's in the garage door opener industry.

Chamberlain sued Overhead Door and GMI. The lawsuit alleged willful infringement of a number of patents, but the only one at issue in this trial was U.S. Patent No. 8,587,404, issued in 2013 and titled "Movable Barrier Operator and Transmitter with Imminent Barrier Moving Notification." Chamberlain asserted infringement of claims 4 and 20 of this patent.

The case had been tried to a defense verdict in March 2022, but the court ordered a new trial as to the '404 patent.

The defendants denied infringement and contended that the claims at issue were invalid for obviousness and improper inventorship. The defense pointed to an Underwriters Laboratories document as prior art, arguing that the document was a public standard, published to the industry to improve safety. Chamberlain contended that the document was explicitly designated for UL's internal use only.

Injury:

Chamberlain sought a reasonable royalty as a running royalty or, alternatively, as a lump sum.

Result: The jury found infringement of claims 4 and 20 and did not find either claim invalid. It determined that Chamberlain's damages totaled $43.4 million. Of that amount, the jury found that $2.7 million represented a reasonable royalty and was a running royalty, not a lump sum.

The jury did not find that the infringement was willful.

The Chamberlain Group Inc.

Trial Information:

Judge: Rodney Gilstrap

Trial Length: 4 days

Trial Deliberations: 0

Editor's Comment: This report is based on court documents. The attorneys did not respond to the reporter's phone calls.

Writer John Schneider

Teenage drunk driver nearly killed couple: lawsuit

Type: Verdict-Plaintiff

Amount: $43,336,091

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

Injury Type(s):
- *leg* - fracture, leg; crush injury, leg
- *brain* - coma
- *other* - thigh; fracture; unconsciousness; physical therapy; cortisone injections; reconstructive surgery
- *cardiac* - heart; myocardial infarction
- *foot/heel* - foot; fracture, foot; crush injury, foot
- *urological* - kidney; kidney failure
- *hand/finger* - hand; finger; fracture, finger; crush injury, hand
- *arterial/vascular* - internal bleeding
- *surgeries/treatment* - external fixation
- *pulmonary/respiratory* - respiratory; collapsed lung

Case Type:
- *Motor Vehicle* - Passenger; Multiple Impact; Multiple Vehicle; Alcohol Involvement

Case Name: Steadman Haase and Eileen Haase v. John Henery Roberson III, No. CACE21017147

Date: July 19, 2023

Plaintiff(s):
- Eileen Haase, (Female, 68 Years)
- Steadman Haase, (Male, 64 Years)

Plaintiff Attorney(s):
- Amanda Demanda; Amanda Demanda Law Group; Miami FL for Steadman Haase,, Eileen Haase
- Michael David Redondo; Redondo Law P.A.; Miami FL for Steadman Haase,, Eileen Haase
- Andres “Andy” Alonso; Alonso Legal, PLLC; Miami FL for Steadman Haase,, Eileen Haase

Defendant(s):

- John Henery Roberson III

Defense Attorney(s):

- None Reported for John Henery Roberson III

Facts:

A trio of Miami attorneys secured a $43 million jury verdict for clients after closing arguments seemed to have left not a dry eye in a Broward County courtroom.

"I was choked up. Even my eyes were watery," Amanda Demanda said about the moments she addressed the five-woman, one-man jury during closing arguments. "The jury was connected with me. They were all crying. It was very emotional."

The one-day trial was fast-tracked in Broward Circuit Court.

The attorneys argued that their clients, Steadman and Eileen Haase, were nearly killed by 18-year-old John Henry Roberson III, at the onset of COVID-19, who is alleged to have been driving under the influence at the time of the crash.

The crash occurred Dec. 22, 2019, on Rock Island Road, near its intersection with 44th Street in Lauderhill. Roberson, who did not have bodily injury insurance coverage, was traveling in the southbound lane when he crashed into the rear of another vehicle. The impact caused Roberson's vehicle to fly in the air and land on the Haases' sedan, which was in the northbound lane.

The defendant was served but chose not to appear at trial. Attorney Michael David Redondo said the team strategy was to make sure the jurors understood that while the case was only before them for one day, and there was no defendant present, plaintiffs' counsel didn't want either of those issues to diminish the seriousness of this case.

"The clients themselves were the conduit that brought everything through," Redondo said. "There's no one better than your own client in my opinion; doctors are great about doing their doctor thing, and you can get an economist up there and we can do life care plans, but when it comes to pain and suffering, which is typically the biggest part of every case anyway, particularly in a case like this with catastrophic injuries … I think just having the clients tell their story in their own words in a detailed manner, and prepping the jury for that kind of efficient presentation, is really what helped us get that result."

Injury:

Following the crash Steadman Haase was airlifted to Broward Health North, where he remained in a coma for nearly two months.

Steadman Haase suffered crush injuries/fractures to his left leg and foot. He specifically had four fractures to the bottom half of his leg. He also experienced internal bleeding,

kidney failure and collapsed lungs. His injuries led to a heart attack, as well.

Steadman Haase required breathing tubes during his hospital stay. He was in intensive care for several weeks and received an external fixator for his left leg. He ultimately underwent multiple surgeries to reconstruct the leg.

Steadman Haase was transferred to a rehabilitation facility in February. He went to another facility the following month before going home in late March.

Steadman Haase underwent physical therapy from April through December of 2020. He then received cortisone injections and followed up with an orthopedic surgeon. He said he will eventually need a left knee replacement.

Reportedly, Steadman Haase had to re-learn how to walk and still can sometimes only walk around 100 feet before experiencing pain. He was earning around $70,000 per year at the time of the crash, however now claims that due to his injuries he had to switch to a job as a pizza delivery driver. He estimated that he can earn around $20,000 a year from this job.

Eileen Haase was transported via ambulance to Broward Health North. She was in a coma for two weeks and was at the hospital for around six weeks.

Eileen Haase's hands were crushed, causing fractures in nearly all of her fingers. She also had a collapsed lung.

Eileen Haase underwent surgery on her hands and fingers. She then went to a rehabilitation facility in January before being sent home.

Plaintiffs' attorneys explained to the jurors that when the couple was expeditiously released from hospital due to COVID-19 concerns, Eileen Haase had to take care of her husband at home while still suffering from her injuries.

"Both of her hands were crushed in the accident. She didn't even have the use of her hands," attorney Redondo said.

Redondo and co-counsel Andres "Andy" Alonso are solo practitioners. Demanda's firm has a team of four lawyers. They said the jury got emotional listening to Demanda explain how the catastrophic injuries affected their clients. They felt it was that emotion that led the jury to agree to everything the attorneys requested.

“It was the little things like, how do you wipe yourself after going to the bathroom? Well, he couldn’t. How does he shower himself? Well, he couldn’t. All of those things fell on his wife who herself was dealing with hands that were crushed,” Redondo said.

Eileen Haase continues to see an orthopedic surgeon. Since the crash she has developed heart problems and uses a breathing tube. She was also scheduled for hand surgery in September 2023. However, she may lose three of her fingers.

Eileen Haase noted that she is no longer able to drive or make a fist with either hand. She was a Ph.D. student at the time of the crash and hoped to obtain a corporate training job. However, she has not worked since the accident.

Plaintiffs’ counsel noted that the Haases’ retirement plans are gone, and the plaintiffs have relied on their daughters to help them with bills. The plaintiffs also can no longer go out to the movies or a restaurant.

Plaintiffs' counsel sought recovery of $1,989,960.70 in past medical expenses for Steadman Haase and $46,130.50 in past medical expenses for Eileen Haase. The plaintiffs also sought future medical expenses, past and future lost earnings and damages for their past and future pain and suffering. Plaintiffs’ counsel asked the jury to award more than $40 million.

Redondo said even some colleagues remarked that asking for this much was a gamble.

He credits the team’s confidence in the system and the jury, but also for not listening to those questioning the damages figure.

“The jury’s going to think you’re being greedy or something like that … maybe you’re being a little too aggressive” was the feedback Redondo said he was getting. “I don’t think we asked for one penny less than we should have.”

The gamble worked.

Result: The jury awarded $22,109,960.70 to Steadman Haase and $21,226,130.50 to Eileen Haase, making the total awarded $43,336,091.20. The plaintiffs' team will now engage in post-judgment discovery and track down any assets they can recover from the defendant.

The attorneys said they know there may not be a recovery, but it's validation for what the plaintiffs have been through, "not for me as their attorney, but from a jury of their peers," Redondo said.

Redondo added, "We plan on executing on the judgment to the extent that there are any recoverable assets because again, this was a drunk driver who very easily could have killed both my clients."

Eileen Haase

$ 46,130.50 Past Medical Cost

$ 280,000 Future Medical Cost

$ 900,000 Future Lost Earnings

$ 15,000,000 Future Pain Suffering

$ 5,000,000 Past Pain Suffering

$ 21,226,130.50 Plaintiff's Total Award

Steadman Haase

$ 989,960.70 Past Medical Cost

$ 375,000 Future Medical Cost

$ 245,000 Past Lost Earnings

$ 500,000 Future Lost Earnings

$ 15,000,000 Future Pain Suffering

$ 5,000,000 Past Pain Suffering

$ 22,109,960.70 Plaintiff's Total Award

Trial Information:

Judge:	John B. Bowman
Trial Length:	1 days
Trial Deliberations:	2.25 hours
Jury Vote:	6-0
Jury Composition:	1 male, 5 female
Editor's Comment:	This report is based on an article published by VerdictSearch's sister publication, the Daily Business Review, an ALM publication. Additional information was gleaned from plaintiffs' counsel and from court documents.
Writer	Melissa Siegel

Collision with 18-wheeler caused debilitating injuries: Suit

Type: Verdict-Plaintiff

Amount: $43,320,229

State: Louisiana

Venue: Iberville Parish

Court: 18th Judicial District Court, Parish of Iberville, LA

Injury Type(s):

- *arm* - scar and/or disfigurement, arm
- *leg* - fracture, leg; fracture, femur
- *back* - contusion, spine; syringomyelia/syrinx
- *head* - closed head injury
- *knee* - patella; fracture, knee; fracture, patella
- *neck* - fracture, neck; fracture, C2; fracture, neck; fracture, C3; fracture, neck; fracture, C4; fracture, neck; fracture, C5; contusion, spine; fusion, cervical; fracture, vertebra; fracture, C2; fracture, vertebra; fracture, C3; fracture, vertebra; fracture, C4; fracture, vertebra; fracture, C5; syringomyelia/syrinx; fusion, cervical, two-level
- *brain* - traumatic brain injury
- *chest* - fracture, sternum
- *other* - spasm; thigh; ablation; abrasions; dysphagia; laceration; malnutrition; unconsciousness; fracture, distal; physical therapy; pins/rods/screws; steroid injection; hardware implanted; epidural injections; scar and/or disfigurement
- *face/nose* - face; fracture, nose; fracture, facial bone
- *urological* - incontinence; neurogenic bowel; neurogenic bladder
- *hand/finger* - hand; hand, deformity
- *neurological* - nerve damage/neuropathy; neurological impairment; Brown-Sequard syndrome
- *surgeries/treatment* - open reduction; internal fixation
- *mental/psychological* - cognition, impairment; memory, impairment
- *pulmonary/respiratory* - respiratory; pneumothorax; collapsed lung
- *gastrointestinal/digestive* - gallbladder, loss/removal

Case Type:

- *Motor Vehicle* - Truck; Broadside; Left Turn; Intersection; Tractor-Trailer; Multiple Vehicle; Automobile Insurance

Case Name: Zachary Stewart and Caitlin Stewart, Individually and on behalf of their minor children, Aaron Stewart and Liam Stewart v. The Travelers Indemnity Company of Connecticut, Service Steel Warehouse, L.P. and Burk Hanks, No. 81077

Date: November 06, 2023

Plaintiff(s):

- Liam Stewart, (, 0 Years)
- Aaron Stewart, (, 0 Years)
- Caitlin Stewart, (, 0 Years)
- Zachary Stewart, (Male, 29 Years)

Plaintiff Attorney(s):

- Tony Clayton; Clayton, Frugé & Ward; Port Allen LA for Aaron Stewart,, Liam Stewart,, Caitlin Stewart,, Zachary Stewart
- Chet G. Boudreaux; Gordon McKernan Injury Attorneys; Baton Rouge LA for Aaron Stewart,, Liam Stewart,, Caitlin Stewart,, Zachary Stewart
- Michael Frugé; Clayton, Frugé & Ward; Port Allen LA for Aaron Stewart,, Liam Stewart,, Caitlin Stewart,, Zachary Stewart

Plaintiff Expert (s):

- John J. Tabor M.D.; General Surgery; Baton Rouge, LA called by: Chet G. Boudreaux
- John M. Whatley M.D.; Orthopedic Surgery; Baton Rouge, LA called by: Chet G. Boudreaux
- Sean K. Graham M.D.; Pain Management; Baton Rouge, LA called by: Chet G. Boudreaux
- David L. Weir M.D.; Neurology; Lafayette, LA called by: Michael Frugé
- Gregory L. Fautheree M.D.; Neurosurgery; Baton Rouge, LA called by: Chet G. Boudreaux
- William H. Rogers Ph.D.; Economics; St. Louis, MO called by: Chet G. Boudreaux
- Stephanie Chalfin; Life Care Planning; Baton Rouge, LA called by: Michael Frugé

Defendant(s):

- CNA
- Burk Hanks
- Service Steel Warehouse
- Markel Insurance Co. Inc.
- Navigators Specialty Insurance Co.
- Travelers Indemnity Co. of Connecticut

Defense Attorney(s):

- John J. Glas; Deutsch Kerrigan LLP; New Orleans, LA for CNA
- Raymond C. Lewis; Deutsch Kerrigan LLP; New Orleans, LA for CNA
- Daniel R. Atkinson Jr.; Law Offices of Julie E. Vaicius; Metairie, LA for Navigators Specialty Insurance Co.
- Denia S. Aiyegbusi; Deutsch Kerrigan LLP; New Orleans, LA for CNA

Defendant Expert(s):

- Jordan Frankel J.D., M.H.S.; Life Care Planning; Metairie, LA called by: for John J. Glas, Raymond C. Lewis, Daniel R. Atkinson Jr., Denia S. Aiyegbusi
- Joshua S. Shimony M.D., Ph.D.; Neuroradiology; St. Louis, MO called by: for John J. Glas, Raymond C. Lewis, Daniel R. Atkinson Jr., Denia S. Aiyegbusi
- Kenneth J. Boudreaux Ph.D.; Economics; New Orleans, LA called by: for John J. Glas, Raymond C. Lewis, Daniel R. Atkinson Jr., Denia S. Aiyegbusi
- Michael D. Chafetz Ph.D.; Neuropsychology; New Orleans, LA called by: for John J. Glas, Raymond C. Lewis, Daniel R. Atkinson Jr., Denia S. Aiyegbusi
- Archibald L. Melcher M.D.; Neurology; Metairie, LA called by: for John J. Glas, Raymond C. Lewis, Daniel R. Atkinson Jr., Denia S. Aiyegbusi

Insurers:

- CNA
- Markel Insurance Co. Inc.
- Travelers Indemnity Co. of Connecticut
- Navigators Group Inc. (The)

Facts:

On Aug. 27, 2021, plaintiff Zachary Stewart, 29, a construction supervisor, was driving a pickup truck on Louisiana Highway 74 in St. Gabriel. Burk Hanks was operating an 18-wheel truck with a flatbed trailer in the opposite direction of the same two-lane road.

Hanks attempted to turn left onto Louisiana Highway 3115. He turned directly into the driver’s side of Stewart's vehicle. The impact caused Stewart’s truck to spin off the road and land in a ditch. Stewart claimed injuries to his head, neck, femur, knee, sternum, thigh and face.

Stewart sued Hanks and Hanks’ employer, Service Steel Warehouse. Stewart alleged that Hanks was negligent in the operation of his vehicle and that Service Steel Warehouse was vicariously liable for Hanks’ actions.

Stewart also sued various companies that provided liability insurance for the defendants: Travelers Indemnity Co. of Connecticut, Markel Insurance Co. Inc., CNA and Navigators Group Inc. Travelers and Markel settled out prior to trial. CNA then settled during trial. Hanks and his employer remained defendants, but did not have counsel at trial.

The defense admitted liability, so the jury only considered causation and damages.

Injury:

Stewart lost consciousness and initially had no pulse at the scene. His breathing was erratic and he required immediate intubation. Stewart was then airlifted to a hospital, where he regained consciousness.

Stewart suffered fractures to his C2, C3, C4 and C5 vertebrae. He also had bruising and contusions of his spinal cord that led to the development of a syrinx (spinal cord cyst). He additionally suffered fractures to his left distal femur, medial and lateral femoral condyles and kneecap. His other claimed injuries included sternum and nasal fractures, facial abrasions, a severe left thigh laceration and a left pneumothorax. Plaintiffs’ counsel also

contended that Stewart had a moderate-to-severe traumatic brain injury under The Mayo Classification System because he was unconscious for more than 30 minutes after the crash.

Stewart was stabilized upon his arrival at the hospital. The next day, he underwent a C2-4 fusion. He also had open reduction with internal fixation to address his femur/leg injuries.

Stewart remained on a ventilator for approximately one week after the crash. He remained in the hospital through Sept. 13, 2021. During that time, he had surgery to insert a feeding tube.

Stewart was then transferred to an inpatient rehabilitation center, where he remained until Oct. 22, 2021. Following his discharge, he had daily physical, occupational and psychological therapies at an outpatient facility for patients with spinal cord injuries. His wife, Caitlin Stewart, had to take him to this facility every day for three years.

Stewart also underwent three surgeries to remove the hardware in his femur/leg. He additionally received cervical radiofrequency ablations and epidural steroid injections.

Stewart was temporarily paralyzed and had to learn how to walk again. While he is able to ambulate, he said he experiences continued complications from his injuries. The bleeding in his spinal cord became a lesion that caused nerve damage. He was subsequently diagnosed with Brown-Séquard syndrome. Because of this condition, he has weakness on the right side of his body. He drags his right leg when he walks, his right arm has low muscle tone and his right hand is deformed. Stewart was right-handed prior to the crash.

On his left side, Stewart experiences uncontrollable muscle spasms. He also cannot feel hot or cold temperatures. As a result, he does not realize when he is becoming overheated or extremely cold, which has caused him to collapse on several occasions.

Stewart additionally developed dysphagia because the spinal cord nerves alongside his diaphragm were damaged. He became malnourished as a result. He lost 40 pounds in the two months after the crash and weighed only 120 pounds at the time of trial. Because of these complications, he had to have his gallbladder surgically removed.

Stewart stated that he also continues to experience incontinence and a neurogenic bowel and bladder. He said he will still defecate or urinate on himself, which causes embarrassment.

At the time of trial, Stewart was still undergoing physical therapy, seeing a pain-management doctor and taking medical marijuana. He said he will need these treatments for the rest of his life. His life-care plan also included two adjacent-level fusions, a knee

replacement, a possible spinal cord stimulator and continued imaging studies of his spine.

Stewart's wife and father testified that Stewart has become more aggressive, impatient, withdrawn and depressed since the crash. Stewart also experiences memory problems, so his wife has to keep a calendar for him. The Stewarts have sought marriage counseling, as well.

Stewart additionally claimed he can only drive short distances and cannot sign his name or type without assistance. At the time of trial, he was undergoing vocational counseling in the hopes of obtaining a job. Plaintiffs' counsel argued that Stewart will only be able to work part-time and will earn much less than he did in his job as a construction supervisor.

Stewart sought recovery of past and future medical expenses and past and future lost earnings. He also sought damages for past and future physical pain and suffering, past and future mental pain, anguish and emotional distress, past and future loss of enjoyment of life, past and future disability, and scarring and disfigurement. His wife and two children -- Liam and Aaron Stewart -- filed derivative claims for loss of consortium. Plaintiffs' counsel asked the jury to award approximately $52 million.

The defense did not dispute the extent of Stewart's spinal cord injury. However, defense counsel questioned whether Stewart had a TBI. Defense counsel contended that Stewart's CT scans showed no skull fractures or objective evidence of a traumatic brain injury.

Defense counsel specifically claimed Stewart's prolonged unconsciousness did not signify a TBI. The defense argued that Stewart's loss of consciousness did not result from a head injury, but instead was caused by neurogenic shock from his spinal cord injury and by the sedative medications he received during his transport to the hospital.

The defense further maintained that Stewart's memory loss did not stem from a TBI and was instead a side effect of his nerve pain medication. The defense also claimed Stewart's personality and mood changes were not caused by a brain injury, but resulted from his frustration with his medical condition. The defense further argued that Stewart is able to drive and walk, and can also work full-time in a light-duty job.

Defense counsel suggested a total award of $10 million.

Result:

The jury awarded the plaintiffs $43,320,228.81. The court entered a judgment against Navigators Group for $9 million, which was the limit of Navigators' excess policy.

Zachary Stewart

$ 904,195 Future Medical Cost

$ 362,928 Past Lost Earnings

$ 5,263,258 Future Lost Earnings

$ 1,000,000 Past Loss Enjoyment of Life

$ 1,000,000 Future Loss Enjoyment of Life

$ 8,000,000 Future Pain Suffering

$ 2,500,000 Past Pain Suffering

$ 6,000,000 future disability

$ 6,000,000 future mental pain, anguish and emotional distress

$ 2,000,000 past disability

$ 2,000,000 scarring and disfigurement

$ 2,500,000 past mental pain, anguish and emotional distress

$ 38,320,228.81 Plaintiff's Total Award

Caitlin Stewart

$ 4,000,000 loss of consortium

$ 4,000,000 Plaintiff's Total Award

$ 500,000 loss of consortium

$ 500,000 Plaintiff's Total Award

Aaron Stewart

$ 500,000 loss of consortium

$ 500,000 Plaintiff's Total Award

Trial Information:

Judge:	Alvin Batiste, Jr.
Trial Length:	6 days
Trial Deliberations:	80 minutes
Jury Vote:	12-0
Post Trial:	Plaintiffs’ counsel filed a motion to tax costs. Navigators’ counsel filed motions for judgment notwithstanding the verdict and for remittitur. Navigators’ counsel also filed a motion to adjust how much credit the insurer will receive for the settlements with the other defendants.
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel and defense counsel for Navigators. Additional information was gleaned from court documents. CNA's counsel did not respond to the reporter's phone calls. Counsel for the remaining defendants were not asked to contribute.
Writer	Melissa Siegel

Plaintiff alleged infringement of medical tech patents

Type: Verdict-Plaintiff

Amount: $42,000,000

State: Delaware

Venue: Federal

Court: U.S. District Court, District of Delaware, Wilmington, DE

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: Board of Regents, The University of Texas System; and TissueGen, Inc. v. Boston Scientific Corp., No. 1:18cv392

Date: January 31, 2023

Plaintiff(s):
- TissueGen Inc. (, 0 Years)
- Board of Regents, The University of Texas System (, 0 Years)

Plaintiff Attorney(s):
- Michael W. Shore; The Shore Firm; Dallas TX for Board of Regents, The University of Texas System, TissueGen Inc.
- Chijioke Offor; The Shore Firm; Dallas TX for Board of Regents, The University of Texas System, TissueGen Inc.
- John P. Lahad; Susman Godfrey LLP; Houston TX for Board of Regents, The University of Texas System, TissueGen Inc.
- Corey Lipschutz; Susman Godfrey LLP; Houston TX for Board of Regents, The University of Texas System, TissueGen Inc.
- Alex Jacobs; The Shore Firm; Dallas TX for Board of Regents, The University of Texas System, TissueGen Inc.
- Stamatios Stamoulis; Stamoulis & Weinblatt LLC; Wilmington DE for Board of Regents, The University of Texas System, TissueGen Inc.

Plaintiff Expert (s):

- Kirk Garratt M.D.; Interventional Cardiology; Newark, DE called by: Michael W. Shore, Chijioke Offor, John P. Lahad, Corey Lipschutz, Alex Jacobs, Stamatios Stamoulis
- Justin Lewis CPA; Economics; San Francisco, CA called by: Michael W. Shore, Chijioke Offor, John P. Lahad, Corey Lipschutz, Alex Jacobs, Stamatios Stamoulis
- William G. Pitt Ph.D.; Biomedical; Provo, UT called by: Michael W. Shore, Chijioke Offor, John P. Lahad, Corey Lipschutz, Alex Jacobs, Stamatios Stamoulis

Defendant(s):

- Boston Scientific Corp.

Defense Attorney(s):

- David J.F. Gross; Faegre Drinker Biddle & Reath LLP; East Palo Alto, CA for Boston Scientific Corp.
- Timothy E. Grimsrud; Faegre Drinker Biddle & Reath LLP; Minneapolis, MN for Boston Scientific Corp.
- Chad Drown; Faegre Drinker Biddle & Reath LLP; Minneapolis, MN for Boston Scientific Corp.
- Lauren J.F. Barta; Faegre Drinker Biddle & Reath LLP; Minneapolis, MN for Boston Scientific Corp.
- Michael J. Farnan; Farnan LLP; Wilmington, DE for Boston Scientific Corp.

Defendant Expert(s):

- Dean Kereiakes M.D.; Interventional Cardiology; Cincinnati, OH called by: for David J.F. Gross, Timothy E. Grimsrud, Chad Drown, Lauren J.F. Barta, Michael J. Farnan
- David Haas; Economics; Chicago, IL called by: for David J.F. Gross, Timothy E. Grimsrud, Chad Drown, Lauren J.F. Barta, Michael J. Farnan
- David J. Mooney Ph.D.; Biomedical; Cambridge, MA called by: for David J.F. Gross, Timothy E. Grimsrud, Chad Drown, Lauren J.F. Barta, Michael J. Farnan

Facts:

In November 2017, plaintiff Board of Regents of the University of Texas System and its exclusive licensee, plaintiff TissueGen Inc., claimed that Boston Scientific Corp. infringed U.S. Patent No. 6,596,296, of which the Board of Regents was the patentee. The patent claimed a biodegradable polymer fiber drug-delivery system.

TissueGen Inc. was founded by the patent's lead inventor, Dr. Kevin Nelson. Before founding the company, Nelson was a tenured professor of biomedical engineering at the University of Texas at Arlington.

The patent was issued in July 2003, and it expired on Aug. 18, 2020.

The plaintiffs sued Boston Scientific. The lawsuit alleged direct patent infringement; that the infringement was willful; and that the defendant induced its Irish subsidiary to infringe by importing the accused products and selling them to Boston Scientific.

The lawsuit was originally filed in the Western District of Texas (Docket No. 1:17-cv-01103). It was later transferred to Delaware in 2018 on a motion of the defendant.

According to the plaintiffs, the '296 patent claimed a two-phase biodegradable polymer fiber that released therapeutic agents into a patient's tissue at a targeted location, and one of the asserted claims required the release to be at a variable rate, according to the plaintiffs. The plaintiffs claimed that Boston Scientific incorporated this technology into its Synergy drug-eluting coronary stents.

In 2008, Boston Scientific was planning a drug-eluting coronary stent that included a different technology. Later that year, Boston Scientific executives met with Nelson and attended a conference where the TissueGen technology was presented in detail. A similar presentation was subsequently provided to the Boston Scientific executives by email, as well. Some months later, Boston Scientific notified the FDA that it was replacing its planned stent's technology with a continuous two-phase biodegradable polymer design.

The defense denied infringement, denied notice of the patent and contended that all four of the claims asserted at trial were invalid by anticipation.

Injury:

The plaintiffs claimed willful infringement of the patent. They sought $52.7 million, as a reasonable royalty for the period from Nov. 20, 2017, the date suit was filed, through Aug. 18, 2020, a total of 1,002 days.

The defense argued that a reasonable royalty would be no more than $2.5 million.

Result: The trial was bifurcated. Phase 1 was on direct infringement and invalidity, and the deliberations took two hours. Phase 2 was on inducement, willfulness and damages, and the deliberations took 1.2 hours.

The jury found that Boston Scientific was liable for willful infringement of all four of the claims asserted at trial. It found both direct infringement and inducement of infringement and found that the infringement of at least one of the claims was willful. The jury determined that a reasonable royalty was $42 million.

The jury did not find any of the asserted claims invalid.

TissueGen Inc.

Board of Regents, The University of Texas System

Trial Information:

Judge: Gregory B. Williams

Demand: $35,125,000 (during phase 1, before the start of deliberations)

Offer: $2.5 million (before trial)

Trial Length: 5 days

Trial Deliberations: 3.2 hours

Jury Vote: 8-0

Jury Composition: 2 male, 6 female

Post Trial: With prejudgment interest, the judgment is expected to be about $52 million. After a judgment is entered, the plaintiffs will seek attorney fees, taxable costs and enhancement of the damages.

Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter’s phone calls.
Writer	John Schneider

Gross Negligence-Real Property-TrespassEnergy and Natural Resources-Oil and Gas Law

Type: Verdict-Plaintiff

Amount: $41,920,186

State: Texas

Venue: McMullen County

Court: McMullen County District Court, 343rd, TX

Case Type:
- *Gross Negligence*
- *Real Property* - Trespass
- *Energy and Natural Resources* - Oil and Gas Law

Case Name: Leo O. Quintanilla, Hector Quintanilla, Paloma Cattle Company, Ltd., LHQ Management, LLC, and Escondido Hunting, Inc. v. Regency Field Services LLC, Regency Energy Partners LP, Regency GP LP, and Regency GP LLC, No. M-14-0029-CV-C

Date: February 01, 2023

Plaintiff(s):
- LHQ Management LLC (, 0 Years)
- Leo O. Quintanilla, (Male, 0 Years)
- Hector Quintanilla, (Male, 0 Years)
- Escondido Hunting Inc. (, 0 Years)
- El Dorado Gas & Oil Inc. (, 0 Years)
- Paloma Cattle Company Ltd. (, 0 Years)
- SilverBow Resources Operating LLC (, 0 Years)

Plaintiff Attorney(s):

- Todd W. Mensing; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Taylor L. Freeman; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Christopher M. Hogan; Hogan Thompson LLP; Houston TX for El Dorado Gas & Oil Inc.
- James A. Schuelke; Hogan Thompson LLP; Houston TX for El Dorado Gas & Oil Inc.
- Cameron Byrd; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Hilary S. Greene; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Harrison G. Scheer; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Thomas Cooke; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Jane Langdell Robinson; Ahmad, Zavitsanos & Mensing PLLC; Houston TX for SilverBow Resources Operating LLC
- Kimberly Kay Kreider-Dusek; ; Tilden TX for SilverBow Resources Operating LLC
- Johnathan A. Mondel; Hogan Thompson LLP; Houston TX for El Dorado Gas & Oil Inc.

Plaintiff Expert (s):

- Bill Crenshaw; Petroleum; Cat Spring, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Brun Hilbert Ph.D.; Geology; Menlo Park, CA called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Gary Trotter; Petroleum Drilling; Boerne, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Zach Long; Geology; Houston, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Zach Maxey; Petroleum Drilling; San Antonio, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Derek Newton; Petroleum Drilling; Houston, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Mario Guerra; Metallurgy; Houston, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Randy Ponder; Geology; The Woodlands, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Steve Bruington; Petroleum; San Antonio, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Austin Comeaux; Geology; , called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Sheila Enriquez CPA; Accounting; Houston, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel
- Liaquat Ali Ph.D.; Geology; Houston, TX called by: Todd W. Mensing, Taylor L. Freeman, Christopher M. Hogan, James A. Schuelke, Cameron Byrd, Hilary S. Greene, Harrison G. Scheer, Thomas Cooke, Jane Langdell Robinson, Kimberly Kay Kreider-Dusek, Johnathan A. Mondel

Defendant(s):

- Regency GP LLC
- Regency GP L.P.
- ETC Field Services LLC
- La Grange Acquisition L.P.
- Regency Field Services LLC
- Regency Energy Partners L.P.

Defense Attorney(s):

- R. Paul Yetter; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Bryce L. Callahan; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Robert D. Woods; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Heriberto R. Montalvo; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Reagan W. Simpson; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- David J. Gutierrez; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- J. Reid Simpson; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Katie N. Tipper-McWhorter; Yetter Coleman LLP; Houston, TX for Regency Field Services LLC
- Roger Dale Bellows; Bellows Law Firm PLLC; Three Rivers, TX for Regency Field Services LLC

Defendant Expert(s):

- John Hughett; Petroleum Drilling; Dallas, TX called by: for R. Paul Yetter, Bryce L. Callahan, Robert D. Woods, Heriberto R. Montalvo, Reagan W. Simpson, David J. Gutierrez, J. Reid Simpson, Katie N. Tipper-McWhorter, Roger Dale Bellows
- Todd Brooker; Petroleum Drilling; Austin, TX called by: for R. Paul Yetter, Bryce L. Callahan, Robert D. Woods, Heriberto R. Montalvo, Reagan W. Simpson, David J. Gutierrez, J. Reid Simpson, Katie N. Tipper-McWhorter, Roger Dale Bellows
- Alberto Gutierrez; Geology; Albuquerque, NM called by: for R. Paul Yetter, Bryce L. Callahan, Robert D. Woods, Heriberto R. Montalvo, Reagan W. Simpson, David J. Gutierrez, J. Reid Simpson, Katie N. Tipper-McWhorter, Roger Dale Bellows
- Matthew Minnick Ph.D.; Geology; Rapid City, SD called by: for R. Paul Yetter, Bryce L. Callahan, Robert D. Woods, Heriberto R. Montalvo, Reagan W. Simpson, David J. Gutierrez, J. Reid Simpson, Katie N. Tipper-McWhorter, Roger Dale Bellows

Facts:

In 2007, plaintiff Swift Operating Co., now known as SilverBow Resources Operating LLC, owned mineral interests and operated several oil and gas wells near an acid-gas injection well in McMullen County. The injection well disposed of waste from a natural gas processing plant and was owned and operated by Regency Field Services LLC, now known as ETC Texas Pipeline Ltd.

The injection well disposed of a combination of hydrogen sulfide and carbon dioxide by injecting it deep into the ground. The well was operated pursuant to a permit from the Texas Railroad Commission.

At some point, plaintiff El Dorado Gas & Oil Inc. purchased several of Swift's oil and gas wells.

In 2014, several landowners sued Regency and some related companies. Swift and El Dorado later intervened as plaintiffs. The lawsuit alleged trespass and gross negligence by Regency. All plaintiffs except Swift and El Dorado eventually settled. Swift and El Dorado settled all their claims except those against Regency.

The plaintiffs alleged that hydrogen sulfide can cause significant damage to metals and other materials used in oil and gas production and can contaminate hydrocarbons and water. The plaintiffs further claimed that Regency/ETC interfered with their rights to explore, obtain, produce and possess minerals. According to the plaintiffs, there was a risk that the underground plume of injectate would migrate to the subsurface of nearby properties where the plaintiffs operated wells or planned to drill in the future.

As part of the permitting process, Regency had provided the Railroad Commission with models purporting to show the limits of the injectate's potential migration across geological formations. The plaintiffs claimed that those models were inaccurate.

The defense denied trespass and gross negligence. ETC Texas Pipeline argued that the injection well has been permitted by the Railroad Commission at all times; that, although the original model turned out to be inaccurate, it was revised in 2012 at the commission's request and has been accurate ever since.

In addition, the defense argued that the injectate plume had not reached the plaintiffs' wells or proposed future drilling locations by the time of trial; that the plume would not do so in the future; and that the plaintiffs could avoid the alleged risk of the plume by drilling around it.

Injury:

SilverBow claimed that the injections would force it to use upgraded materials and enhanced procedures for future wells and in plugging and abandoning existing wells in the area. The injections were ongoing at the time of trial.

SilverBow sought about $30 million for lost net revenue of claimed future wells; $717,296 for the increased cost of plugging and abandoning an existing well referred to as FB Horton 2H; and $854,321 for increased costs of plugging and abandoning other existing wells.

El Dorado claimed that the injections forced it to scrap plans for recompletion of certain existing wells and to use upgraded materials and enhanced procedures to plug and abandon other existing wells in the area.

El Dorado sought $9,019,563 for the increased cost of plugging and abandoning existing wells and $8,329,000 in lost net revenue from future recompletions.

The plaintiffs also sought punitive damages, in an unspecified amount.

The defense argued that there was no competent evidence of risk or damage to the plaintiffs; that there was therefore no injury; and that the plaintiffs' drilling plans were concocted for support their damages claims.

The defense further disputed what materials and procedures would be necessary for drilling future wells and plugging and abandoning existing wells, and whether proposed recompletions of existing wells would be economical.

Result:

The jury found that ETC Texas Pipeline interfered with SilverBow’s and El Dorado’s rights to explore, obtain, produce and possess minerals. It determined that the plaintiffs’ damages totaled $41,920,186.

The jury did not find gross negligence.

Escondido Hunting Inc.

LHQ Management LLC

Paloma Cattle Company Ltd.

Hector Quintanilla

Leo Quintanilla

SilverBow Resources Operating LLC

$ 23,000,000 lost net revenues of Silverbow's future wells

$ 854,321 increased costs to plug and abandon Silverbows's existing wells

$ 717,296 increased cost to plug and abandon the FB Horton 2H well

$ 24,571,617 Plaintiff's Total Award

El Dorado Gas & Oil Inc.

$ 9,019,563 additional costs to El Dorado to plug and abandon existing wells

$ 8,329,000 lost net revenue from future recompletion of existing wells

$ 17,348,563 Plaintiff's Total Award

Trial Information:

Judge: Janna Whatley

Trial Length:	8 days
Trial Deliberations:	5 hours
Jury Vote:	12-0
Jury Composition:	Gender about even
Editor's Comment:	This report is based on information that was provided by SilverBow's, El Dorado's and ETC Field Services' counsel.
Writer	John Schneider

Nurse fired as retaliation: lawsuit

Type: Verdict-Plaintiff

Amount: $41,499,965

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Los Angeles, CA

Injury Type(s):
- *mental/psychological* - emotional distress

Case Type:
- *Employment* - Retaliation; Whistleblower

Case Name: Maria Gatchalian v. Kaiser Foundation Hospitals, Kaiser Foundation Health Plan Inc., Helen Kersey and Southern California Permanente Medical Group, No. 21STCV15300

Date: December 11, 2023

Plaintiff(s):
- Maria Gatchalian, (Female, 0 Years)

Plaintiff Attorney(s):
- David M. deRubertis; The deRubertis Law Firm, APC; Beverly Hills CA for Maria Gatchalian
- Taylor M. Prainito; Southern California Labor Law Group, P.C.; Los Angeles CA for Maria Gatchalian
- Michael A. Zelman; Southern California Labor Law Group, P.C.; Los Angeles CA for Maria Gatchalian

Plaintiff Expert (s):
- Anthony E. Reading Ph.D.; Psychology/Counseling; Beverly Hills, CA called by: David M. deRubertis, Taylor M. Prainito, Michael A. Zelman
- Heather H. Xitco M.B.A., C.P.A., C.F.F.; Economics; San Diego, CA called by: David M. deRubertis, Taylor M. Prainito, Michael A. Zelman

Defendant(s):

- Helen Kersey
- Kaiser Foundation Hospitals
- Kaiser Foundation Health Plan Inc.
- Southern California Permanente Medical Group

Defense Attorney(s):

- Elizabeth A. Brown; Grube Brown & Geidt LLP; San Francisco, CA for Kaiser Foundation Hospitals, Kaiser Foundation Health Plan Inc., Helen Kersey, Southern California Permanente Medical Group
- Jasmine S. Horton; Grube Brown & Geidt LLP; Los Angeles, CA for Kaiser Foundation Hospitals, Kaiser Foundation Health Plan Inc., Helen Kersey, Southern California Permanente Medical Group

Defendant Expert(s):

- George Woods M.D.; Psychiatry; Oakland, CA called by: for Elizabeth A. Brown, Jasmine S. Horton

Facts:

In 2019, plaintiff Maria Gatchalian, a neonatal intensive care unit charge nurse, was terminated from her position at the Kaiser Permanente Woodland Hills Medical Center. Gatchalian had claimed things at the hospital began to change in 2017 when a new chief nursing executive, Valerie McPherson took over. Gatchalian alleged that various practices implemented by or during the tenure of McPherson compromised patient care and put patients at risk. In August 2017, Gatchalian made an internal Kaiser Hotline complaint, alleging that McPherson was not allowing charge nurses to provide patient care, even when needed. She also alleged that McPherson had engaged in other unsafe practices.

According to Gatchalian, Kaiser did not investigate this report. In the first half of 2018, Gatchalian also alleged that other nurses in the NICU, who she claimed were resentful due to Gatchalian's seniority and the benefits it gave her, began to marginalize her and not recognize her role as charge nurse. Additionally, Gatchalian alleged that their failure to communicate with her as charge nurse jeopardized patient care because the charge nurse needs to know all that is happening in the unit.

In June/July 2018, Gatchalian reported some of her concerns to Kaiser's HR department, including that her then supervisor, Jennifer Astacio, told her that McPherson said Gatchalian should not have reported her concerns about the unit through an unusual occurrence report (UOR), a formal reporting process that allows a care provider to report concerns occurring on a shift. A UOR is routed to Kaiser's risk management department who then routes the UOR to the appropriate department to conduct a root cause analysis and, if appropriate, implement corrective action.

In January/February 2019, Helen Kersey became the new director of maternal child health which included the NICU. Gatchalian alleged that Kersey implemented more practices that compromised patient care, specifically practices that resulted in understaffing which at times led to the NICU violating legally mandated nurse/patient staffing ratios. In early February 2019, Gatchalian met with Kersey at which time Gatchalian alleged that Kersey told her that McPherson does not want too many UORs. Gatchalian alleged she pushed back and told Kersey UORs are part of ensuring proper patient care and, if she felt one was required, she would submit one.

Over the next few months, Gatchalian submitted a series of reports, through the UOR process and otherwise, raising concerns about patient safety and quality of care, including situations involving understaffing resulting in actual or potential staffing ratio violations.

In April 2019, an anonymous letter came into Kaiser with a picture of Gatchalian sitting on a recliner next to an isolette — an incubator for sick babies — on her cell phone with her shoes and socks off and her bare feet touching the isolette. Kaiser interviewed Gatchalian regarding the incident and claimed she initially denied it, only admitting it after she was shown the photo.

Kaiser terminated Gatchalian claiming that her conduct of placing her bare feet on the isolette violated its infection control policies as well as its dress code policies, and that she was allegedly dishonest during her interview about the incident, a violation of Kaiser's principles of responsibility.

Gatchalian sued Kaiser Foundation Hospitals, Kaiser Foundation Health Plan Inc., Kersey and Southern California Permanente Medical Group, alleging whistleblower retaliation.

Gatchalian contended that her termination was in retaliation for her numerous protected disclosures. She further alleged that Kaiser Woodland Hills suffered from chronic understaffing which impacted the quality of care in the NICU and at times led to the NICU falling below legally-required staffing ratios, and that management serially discouraged her from submitting UORs because a UOR required a formal root cause analysis and had an accountability system in place where department management had to report back to risk management.

Gatchalian asserted that Kaiser did not want UORs submitted on these issues because the root cause of the problems was intentional and chronic understaffing, which Kaiser chose to do, and did not want to fix. Gatchalian also contended that Kaiser had a "cover-up culture," as shown by multiple instances in which reports or concerns were raised, but not investigated or, if investigated, white-washed.

The plaintiff's counsel offered comparative evidence of other similar offenses which did not lead to termination. Gatchalian agreed that her conduct in removing her shoes and socks and placing her bare feet on the isolette violated Kaiser's policies and should not have been done, however, she claimed the proper result should have been discipline far short of termination.

Kaiser contended that Gatchalian's conduct was outrageous and put the sick baby in the isolette at risk of harm, either through an infection or through the potential that Gatchalian could have knocked over the isolette. Kaiser also pointed to evidence that after the initial anonymous photo was submitted, additional anonymous submissions of the same photos were sent to Kaiser showing that the anonymous reporter continued to escalate the

situation because no action had been taken. Kaiser alleged it was concerned the reporter could post the photos to social media, causing harm to Kaiser's reputation.

Injury:

Gatchalian had worked at the hospital since 1989, first starting there as a registered nurse in the NICU. Gatchalian was not found to have sought psychological therapy following her termination. However, the plaintiff's forensic psychologist evaluated her and opined that she suffered from an adjustment disorder as a result of the investigation that led to her termination and then suffered a major depressive disorder following the termination.

The plaintiff's counsel argued that for many years Gatchalian had given solid work performance and no write-ups. Additionally, her counsel noted that Gatchalian had made some efforts to find work following her termination, but had still not secured other work and remained unemployed as of the trial. Gatchalian's economist expert testified that the present value of her past and future lost earnings was approximately $2.5 million. She sought recovery for her lost earnings and emotional distress. She also sought punitive damages for the alleged conduct of the defendants.

The defense counsel's retained forensic psychiatrist disagreed and found that Gatchalian had not suffered any psychiatric condition from the termination, but instead claimed her psychological testing showed malingering. Kaiser alleged Gatchalian failed to make reasonable efforts to mitigate her damages, pointing to what the defense suggested was a small number of job applications over four-plus years. Additionally the defense noted that Gatchalian's union had filed a grievance regarding her termination and was preparing to fight to get her job back, but Gatchalian withdrew the grievance opting to file a lawsuit instead.

Result:

On Dec. 11, 2023, the jury found for Gatchalian on her claim that her termination was retaliatory in violation of California Labor Code section 1102.5. The jury awarded Gatchalian $11,499,965 in lost wages and benefits and emotional distress. The jury also found that both Kaiser Foundation Hospitals and Kaiser Foundation Health Plan engaged in malice, fraud or oppression and in Phase II that same day, awarded $15 million against Kaiser Foundation Health Plan and $15 million against Kaiser Foundation Hospitals in punitive damages. Gatchalian's total award was $41,499,965.

Maria Gatchalian

$ 1,268,249 Past Lost Earnings

$ 1,231,716 Future Lost Earnings

$ 30,000,000 Punitive Exemplary Damages

$ 7,500,000 Future Pain Suffering

$ 1,500,000 Past Pain Suffering

$ 41,499,965 Plaintiff's Total Award

Trial Information:

Judge:	Maurice A. Leiter
Trial Length:	11 days
Trial Deliberations:	2 hours
Jury Vote:	12-0 (on all issues other than amount of punitive damages), 10-2 (on amount of punitive damages)
Post Trial:	As the prevailing party, Gatchalian will also be entitled to statutory attorney fees and costs.
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla

Plaintiffs: Drunken driver caused life-threatening injuries

Type: Verdict-Plaintiff

Amount: $41,000,000

State: Texas

Venue: Limestone County

Court: Limestone County District Court, 77th, TX

Injury Type(s):
- *arm* - fracture, humerus
- *head* - closed head injuries
- *brain* - coma; stroke; traumatic brain injury
- *chest* - fracture, rib
- *other* - fracture, sacrum; muscle, damage/loss; type A aortic dissection
- *hand/finger* - hand
- *neurological* - nerve damage/neuropathy; nerve, severed/torn
- *sensory/speech* - vision, partial loss of; speech/language, impairment of
- *arterial/vascular* - artery, severed/tear
- *gastrointestinal/digestive* - colon, laceration; bowel/colon/intestine, perforation

Case Type:
- *Motor Vehicle* - Truck; Stop Sign; Alcohol Involvement

Case Name: Phillip Currie and Charlotte Currie v. Roger Landry, Kenneth Porter and Q.A. Services, L.L.C., No. 31883-A

Date: May 20, 2023

Plaintiff(s):
- Phillip Currie, (Male, 58 Years)
- Charlotte Currie, (Female, 53 Years)

Plaintiff Attorney(s):
- Jonathan Stark; Daniel Stark Injury Lawyers; Bryan TX for Phillip Currie,, Charlotte Currie
- Christopher T. Carver; Daniel Stark Injury Lawyers; Bryan TX for Phillip Currie,, Charlotte Currie

Plaintiff Expert (s):

- Gary D. Konrad Ph.D.; Economics; Nacogdoches, TX called by: Jonathan Stark, Christopher T. Carver
- David J. Altman M.D.; Life Care Planning; San Antonio, TX called by: Jonathan Stark, Christopher T. Carver

Defendant(s):

- Roger Landry
- Kenneth Porter
- Q.A. Services LLC

Defense Attorney(s):

- David McFarland; Thompson, Coe, Cousins & Irons L.L.P.; Houston, TX for Kenneth Porter, Q.A. Services LLC
- Christopher Martin; Martin, Disiere, Jefferson & Wisdom; Houston, TX for Roger Landry
- John Laboon; Martin, Disiere, Jefferson & Wisdom; Houston, TX for Roger Landry
- Gina Mills; Thompson, Coe, Cousins & Irons, L.L.P.; Houston, TX for Kenneth Porter, Q.A. Services LLC

Defendant Expert(s):

- Gary Tunell M.D.; Neurology; Dallas, TX called by: for David McFarland, Christopher Martin, John Laboon, Gina Mills
- Susan Garrison M.D.; Life Care Planning; Houston, TX called by: for David McFarland, Christopher Martin, John Laboon, Gina Mills

Insurers:

- Allianz
- Burlington Insurance Co.

Facts:

On Dec. 19, 2019, plaintiffs Charlotte Curry, 53, a prison guard, and Phillip Currie, 58, also a prison guard, were crossing the intersection of FM 39 and SH 164 in Limestone County when defendant Roger Landry, who was drunk at the time, ran a flashing red light and stop sign and struck their vehicle.

Charlotte and Phillip Currie sued Roger Landry, his supervisor Kenneth Porter and Porter's company, Q. A. Services L.L.C., alleging that they were negligent.

Porter and Q.A. Services L.L.C. argued that Landry was not in the course of his employment at the time of the incident and that they didn't know he would buy alcohol and drink and drive. Although they didn't try to exonerate Landry, they argued that the company was not part of this accident. They also argued that apportionment should be 100 percent on Landry. However, defendants knew about Landry's drinking. Porter allegedly bailed him out of jail after two previous bouts of alcohol-related offenses. Porter testified that he believed Landry was an alcoholic. However, he continued on to say that finding men who were willing to climb 300 feet into the air to install cell phone towers was difficult so he overlooked certain character flaws or red flags. They testified that they go out for weeks at a time, away from their families, to install new cell phone towers and that, after long shifts, they frequently partied together, drinking and smoking marijuana. Landry was found to have a measurable amount of marijuana in his system on the day that the accident occurred. Landry testified that he had smoked marijuana all night the previous night and that his supervisor, Porter, had given it to him.

Injury:

Phillip Currie was first life-flighted to Baylor, Scott & White Hospital in Hillcrest and Charlotte was taken via ambulance to several hospitals that, upon discovering they could not treat her, sent her to other hospitals. She ended up at Baylor, Scott & White Hospital in Temple. Charlotte, who complained of hip and chest pain at the scene of the accident was found to have suffered an aortic transection and right lower quadrant abdominal wall disruption. She was diagnosed with nondisplaced comminuted fracture of her left sacrum at S2, peritoneal wall rupture with large herniation of bowel mesenteric fat, right eighth rib fracture, left-sided pleural effusion/hematoma, trauma to descending aorta and aortic arch with extravasation, renal contusions, left hemothorax, small bowel bucket handle injury, hepatic laceration, bilateral renal infarcts, duodenal hematoma and sigmoid colon injury.

On Dec. 19, 2019, she had an endovascular repair of blunt thoracic aortic injury using Gore TAG stent graft, a right common femoral artery exploration for delivery of endoprosthesis, a retrograde right common femoral sheath placement with non-selective catheterization of the aorta, aortic intra-vascular ultrasound, a diagnostic aortogram, of the thoracic aortic arch, direct repair of the right common femoral arteriotomy, and a left common femoral venous dual-lumen central venous catheter placement under ultrasound guidance. On Dec. 20, 2019, she had an exploratory laparotomy, a retroperitoneal exploration for hematoma near duodenum, a small bowel resection of 25 cm distal ileum-left in discontinuity, a sigmoid colon resection of 10cm-left in discontinuity, and negative pressure therapy-Abthera. On Dec. 21, 2019, she had a repair of the abdominal wall hernia with Strattice mesh, an enteroenterostomy, a colocolostomy and a mobilization of the splenic flexure. On Dec. 24, 2019, she had a self extubation and reintubation. On Dec. 27, 2019, she had a bronchoscopy and an open tracheostomy. On Jan. 9, 2020, she had an IR GJ tube inserted and trach downsized to 7.0 Siley XLTCP. From January 10, 2020, to Feb. 14, 2020, she received care at Baylor Scott and White-Temple. She underwent right abdominal wall incision and drainage on Jan. 16, 2020. She received physical and occupational therapy, speech/language pathology and psychotherapy. She was transferred to Baylor Scott and White Medical Center-Hillcrest for further rehabilitation care. At Hillcrest on Feb. 14, 2020, she was recommended to participate in a comprehensive acute inpatient rehabilitation program with at least three hours of combined physical therapy, occupational therapy and/or speech therapy daily. She continued with At Home Healthcare on Feb. 18, 2020, doing inpatient rehabilitation physical, occupational, and 24-hour rehabilitation nursing care. Her final diagnoses were trauma, thoracic aorta injury, rib fracture, traumatic abdominal hernia, left hemothorax, and adjustment disorder with mixed anxiety and depression. She now has to ride a motorized cart when shopping due to loss of stamina and has to put reminder notes all over her house to remind her how to do seemingly simple tasks like brushing her teeth. She now has a semi-affected gait as well. She was kept in a medically-induced coma for several weeks as doctors worked to perform various surgeries. She is on pain management. She also had a home health nurse who provided additional care.

Phillip, who complained of severe pain to his upper right extremity, weakness, and numbness at the scene of the accident, was found to have suffered a broken humerus which was shoved into his neck cavity and subsequently tore all the nerves, arteries, and muscles in his neck. His diagnoses were trauma activation, right proximal humerus fracture, and right arm nerve injury. He was first life-flighted to Baylor Scott and White-Hillcrest. Doctors there attempted to reduce the fracture without ever being able to

get a pulse in the appendage. He was transferred to Baylor Scott and White-Temple via life flight. He lost almost complete control of his dominant right hand as a result. He also suffered a stroke which caused him to lose peripheral vision in both eyes. He almost bit his tongue off and now has a speech impediment. He was inpatient at the hospital from Dec. 19, 2019, through Dec. 26, 2019. He says his current pain level is a 6/10. He received multiple speech therapy and physical therapy visits from Feb. 10, 2020, to Feb. 15, 2022, at Limestone Medical Center and continues with occupational therapy to this day. Happily married for 16 years, they were forced to live with different family members who continue to care for them: Charlotte, with her daughter, and Phillip with his brother. They both expect future treatment and caregiving. Neither were able to return to their jobs as prison guards at the nearby prison in Thornton. They sought pain and suffering and physical and mental impairment. The Curries asked for between $32 million and $52 million from the jury.

Defense argued that Landry, who was found guilty of two charges of intoxication assault with a motor vehicle and sentenced to seven years on each count, was already paying his dues by being sentenced criminally. The Curries' attorneys argued that Landry was going to receive free medical care while in prison along with vocational rehabilitation, counseling, and treatment so why shouldn't the Curries also receive medical care and treatment? Defense argued that this is what happens when "grief turns to greed" and that the Curries were trying to win the "lawsuit lottery" by asking for so much. Defense argued that $2 million was more than enough and was more than the Curries could have earned at their jobs in 20 years. The Curries' attorneys argued that human beings are more than their ability to earn a living and that human beings should not be boiled down to mere robots in such a manner.

Result: The jury found for the Curries in the amount of $41 million. The jury found the defendant Roger Landry 30 percent liable, the defendant company Q.A. Services L.L.C. 50 percent liable and the defendant supervisor Kenneth Porter 20 percent liable.

Charlotte Currie

$ 97,900 Past Lost Earnings

$ 550,000 Future Lost Earnings

$ 27,993,600 Future Pain Suffering

$ 2,656,800 Past Pain Suffering

$ 150,000 Past Disfigurement

$ 1,233,858 future medical care

$ 200,000 physical and mental impairment sustained in the past

$ 1,756,097 physical and mental impairment sustained in future

$ 34,888,255 Plaintiff's Total Award

Phillip Currie

$ 1,195,662 Future Medical Cost

$ 147,600 Past Lost Earnings

$ 1,000,000 Future Lost Earnings

$ 1,555,200 Future Pain Suffering

$ 1,062,720 Past Pain Suffering

$ 50,000 Past Disfigurement

$ 50,000 Future Disfigurement

$ 100,000 past physical impairment

$ 585,365 future physical impairment

$ 5,746,547 Plaintiff's Total Award

Trial Information:

Judge:	Patrick Simmons
Trial Length:	6 days
Trial Deliberations:	3 hours
Jury Vote:	unanimous
Editor's Comment:	This report is based on information obtained from plaintiffs' attorneys and court documents.
Writer	Yawana Fields

Counter-plaintiff claimed slander of title by other party

Type: Verdict-Defendant

Amount: $40,844,608

Actual Award: $10,189,304

State: Texas

Venue: Collin County

Court: Collin County District Court, 219th, TX

Case Type:
- *Fraud*
- *Contracts* - Breach of Contract
- *Corporations* - Breach of Fiduciary Duty

Case Name: Amandip Jagpal, Harpreet Hayer, Walter Paris, and Intrinsic Capital Corp. v. James Scott Munro, Audrey Perez, Issuer Solutions LLC and Securities Transfer Corp., No. 219-00824-2017

Date: December 13, 2023

Plaintiff(s):
- Walter Paris, (Male, 0 Years)
- Amandip Jagpal, (Male, 0 Years)
- Harpreet Hayer, (Male, 0 Years)

Plaintiff Attorney(s):
- Amandip Jagpal; pro se; for Amandip Jagpal
- None reported; ; for Harpreet Hayer,, Walter Paris

Defendant(s):
- Audrey Perez
- James Scott Munro
- Issuer Solutions LLC
- Intrinsic Capital Corp.
- Securities Transfer Corp.

Defense Attorney(s):
- Paul Kirklin; Kirklin Law Firm PLLC; Houston, TX for James Scott Munro, Audrey Perez, Intrinsic Capital Corp.

Facts:

Counter-plaintiff James Scott Munro, an accountant, and counter-plaintiff Intrinsic Capital Corp. alleged that they owned shares of stock in Intrinsic and a company called Cannabis Science Inc. Munro and Intrinsic alleged that, when they tried to sell the shares, the counter-defendants published statements disparaging the counter-plaintiffs' title.

The case was tried on counterclaims only. The counter-defendants, Amandip Jagpal, Harpreet Hayer and Walter Paris, were associates of a man who allegedly owed millions of dollars to Munro and Intrinsic.

Hayer and Paris died during the litigation, and their estates were substituted as parties.

No claims by or against parties Audrey Perez, Issuer Solutions LLC or Securities Transfer Corp. were submitted to the jury.

Munro alleged that Intrinsic was a consulting company that he owned.

Munro and Intrinsic alleged slander of title by Jagpal, Hayer and Paris. Against Jagpal alone, Munro and Intrinsic alleged breach of fiduciary duty, fraud and breach of contract and violation of Nevada Revised Statute section 225.084.

The court found for Munro and Intrinsic on liability before the case was submitted to the jury. The case therefore went to the jury on damages and attorney fees only.

Jagpal was pro se at trial. The Hayer and Paris estates did not have an attorney and did not appear at trial.

The original petition had named Intrinsic as a plaintiff, with Jagpal, Hayer and Paris claiming that they owned it, as a holding company for Cannabis Science stock.

Injury:

Intrinsic and Munro sought actual damages against all three counter-defendants for slander of title and against Jagpal for breach of fiduciary duty, fraud and breach of contract.

Intrinsic also sought damages, against Jagpal, for violation of Nevada Revised Statute section 225.084.

Munro and Intrinsic also sought punitive damages and attorney fees, against Jagpal alone.

Result: The jury awarded Munro and Intrinsic actual and punitive damages and attorney fees through trial. The many findings added up to $40,844,608, but most of them were duplicative or mutually exclusive. The judgment is for $10,189,304.

According to the judgment, Jagpal is liable for $7,621,304 (consisting of $3,768,000 in actual damages, $3,768,000 in punitive damages and $85,304 in attorney fees through trial), and Hayer and Paris are liable for actual damages of $2,568,000.

Walter Paris

Harpreet Hayer

Amandip Jagpal

Trial Information:

Judge: Andrea Bouressa

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by Munro's and Intrinsic's counsel. Jagpal, Hayer's estate and Paris' estate were not contacted for this report.

Writer John Schneider

Mesothelioma death linked to John Crane products by man's estate

Type: Verdict-Plaintiff

Amount: $40,750,000

State: Illinois

Venue: Cook County

Court: Cook County Circuit Court, IL

Injury Type(s):
- *other* - death; conscious pain and suffering
- *cancer* - lung; chemotherapy; mesothelioma
- *mental/psychological* - emotional distress

Case Type:
- *Products Liability* - Asbestos; Design Defect; Failure to Warn; Strict Liability
- *Wrongful Death* - Survival Damages

Case Name: Annette Beneville, Individually and as Executor of the Estate of Bruce Torgerson, Deceased v. John Crane, Inc., No. 2019 L 012850

Date: August 31, 2023

Plaintiff(s):
- Beverly Torgerson, (Female, 0 Years)
- Annette Beneville, (Female, 0 Years)
- Estate of Bruce Torgerson, (Male, 77 Years)
- Rodney Torgerson and Annette Beneville, (, 0 Years)

Plaintiff Attorney(s):
- Scott L. Frost; Frost Law Firm, PC; San Pedro CA for Annette Beneville,, Estate of Bruce Torgerson
- Jill A. Rakauski; Frost Law Firm, PC; San Pedro CA for Annette Beneville,, Estate of Bruce Torgerson
- Wyatt Berkover; Vogelzang Law, P.C.; Chicago IL for Annette Beneville,, Estate of Bruce Torgerson
- Nicholas J. Vogelzang; Vogelzang Law, P.C.; Chicago IL for Annette Beneville,, Estate of Bruce Torgerson

Plaintiff Expert (s):

- David Y. Zhang M.D., Ph.D.; Pathology; New York, NY called by: Scott L. Frost, Jill A. Rakauski, Wyatt Berkover, Nicholas J. Vogelzang
- Susan M. Raterman C.I.H.; Industrial Hygiene; Chicago, IL called by: Scott L. Frost, Jill A. Rakauski, Wyatt Berkover, Nicholas J. Vogelzang
- Andrew Brodkin M.D.; Pulmonology; Seattle, WA called by: Scott L. Frost, Jill A. Rakauski, Wyatt Berkover, Nicholas J. Vogelzang
- Arnold R. Brody Ph.D.; Cell Biology; Raleigh, NC called by: Scott L. Frost, Jill A. Rakauski, Wyatt Berkover, Nicholas J. Vogelzang
- Marty Kanarek Ph.D., M.P.H.; Public Health; Madison, WI called by: Scott L. Frost, Jill A. Rakauski, Wyatt Berkover, Nicholas J. Vogelzang

Defendant(s):

- John Crane, Inc.

Defense Attorney(s):

- William Swallow; Clyde & Co LLP; Chicago, IL for John Crane, Inc.
- Mark I. Tivin; Manning Gross + Massenburg LLP; Chicago, IL for John Crane, Inc.
- Nora Gierke; Gierke Frank, LLC; Wauwatosa, WI for John Crane, Inc.

Defendant Expert(s):

- John Henshaw M.P.H., C.I.H.; Industrial Hygiene; Sanibel, FL called by: for William Swallow, Mark I. Tivin, Nora Gierke
- Donna M. Ringo C.I.H.; Industrial Hygiene; Louisville, KY called by: for William Swallow, Mark I. Tivin, Nora Gierke
- Ilan A. Feingold M.D.; Pulmonology; South Miami, FL called by: for William Swallow, Mark I. Tivin, Nora Gierke
- George Springs; Corporate Governance; Luling, TX called by: for William Swallow, Mark I. Tivin, Nora Gierke

Facts:

In December 2019, plaintiff's decedent Bruce Torgerson, 77, died from mesothelioma. His estate claimed his mesothelioma and resultant death were due to his exposure to asbestos materials manufactured by John Crane Inc.

Annette Beneville, on behalf of her father's estate, sued John Crane. The plaintiffs alleged that John Crane sold products that contained deadly chrysotile asbestos without warning or testing the products. From 1963 to 1980, Torgerson worked as a "pump man" at sites in North Dakota, Michigan and the Virgin Islands.

The plaintiffs alleged that Torgerson worked with and around John Crane Inc. chrysotile asbestos-containing gaskets and packing. It was alleged that his exposure to John Crane Inc.'s asbestos-containing packing and gaskets was a substantial factor in causing Torgerson's mesothelioma.

The plaintiffs' expert in public health testified that it was widely known in the medical and scientific communities by the 1960s that asbestos was a hazardous, cancer-causing material. Despite this knowledge, the expert opined, John Crane continued to use asbestos in its gaskets and packing without warning or testing.

According to the plaintiffs' expert in industrial hygiene, Torgerson's decades-long asbestos exposure came mainly in the form of working with and around pumps, gaskets, packing and insulation, and his exposure to John Crane's materials significantly contributed to the risk of developing mesothelioma. The plaintiffs' counsel further faulted John Crane for failing to warn users of the hazards associated with its products.

The defense maintained that its products were safe and met industry standards. The defense contended that Torgerson's mesothelioma was due to exposure of other harmful materials not produced by John Crane.

The defense's experts in industrial hygiene testified that chrysotile asbestos did not contribute to Torgerson's disease and that the disease was, in fact, from the amphibole asbestos found in pipe covering. According to the experts, any friable asbestos from John Crane gaskets and packing would have been below the permissible exposure limits and that Torgerson was not around asbestos-containing John Crane gaskets and packing.

John Crane's corporate representative questioned whether Torgerson worked with company materials, since documents from one of his worksites only contained limited mentions of John Crane products.

Injury:

In January 2019, Torgerson was diagnosed with mesothelioma and immediately began treating with chemotherapy. He subsequently consulted with a physician at UCLA about resecting part of his lung, but it was ultimately determined he was not a candidate.

Later in 2019, Torgerson transitioned to hospice care where he remained until his death in December 2019. He is survived by a son and daughter. His wife died in December 2022.

The plaintiffs' expert in occupational/environmental medicine opined that Torgerson's mesothelioma was caused by his working with and around John Crane's chrysotile asbestos products and asbestos insulation.

According to the plaintiffs' pathology expert, Torgerson's exposure to chrysotile asbestos caused his malignant mesothelioma.

The plaintiffs' expert in cellular biology testified as to the damage asbestos fibers cause on a cellular level once they are ingested.

Torgerson's children testified about the kind of father Torgerson was and how he was the caregiver for his second wife, who suffered dementia. Testimony was presented that, after Torgerson's cancer diagnosis, the couple were forced to move from their cherished home to a nursing facility and, after Torgerson's passing, his wife's condition deteriorated. Torgerson's daughter, son and wife were beneficiaries of his estate.

The plaintiffs sought to recover over $40 million in damages for Torgerson's conscious pain and suffering, loss of society and emotional distress, in addition to the beneficiaries' claims of loss of grief, sorrow and mental suffering, loss of services and loss of society.

The defense's expert in pulmonology agreed that Torgerson suffered from mesothelioma, but disputed that the cancer was caused by his exposure to chrysotile asbestos, since this type of asbestos has never caused mesothelioma in the United States.

Result:

The jury determined that the plaintiffs' damages totaled $40.75 million.

Rodney Torgerson and Annette Beneville

$ 800,000 loss of services

$ 550,000 grief, sorrow, and mental suffering

$ 800,000 loss of society

$ 2,150,000 Plaintiff's Total Award

Beverly Torgerson

$ 4,000,000 loss of services

$ 1,000,000 grief, sorrow, and mental suffering

$ 3,600,000 loss of society

$ 8,600,000 Plaintiff's Total Award

Estate of Bruce Torgerson

$ 11,250,000 loss of a normal life

$ 5,250,000 emotional distress

$ 13,500,000 conscious pain and suffering

$ 30,000,000 Plaintiff's Total Award

Annette Beneville

Trial Information:

Judge:	Bridget A. Mitchell
Trial Length:	16 days
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Newborn's injuries due to delayed C-section: lawsuit

Type: Verdict-Mixed

Amount: $40,000,000

State: Illinois

Venue: Coles County

Court: Coles County Circuit Court, IL

Injury Type(s):
- *arm*
- *leg*
- *brain* - brain damage; cerebral palsy; brain abnormalities
- *other* - ischemia; spasticity; physical therapy; seizure disorder
- *sensory/speech* - speech/language, impairment of
- *mental/psychological* - emotional distress; cognition, impairment
- *pulmonary/respiratory* - hypoxia; respiratory distress

Case Type:
- *Medical Malpractice* - Nurse; OB-GYN; Hospital; Childbirth; Birth Injury; Delayed Treatment; Failure to Communicate

Case Name: Jaime Campbell, individually, and as mother and next friend of, Kiera Campbell, a minor v. Sarah Bush Lincoln Health Center, an Illinois not-for-profit corporation; Sarah Bush Lincoln Health Foundation, an Illinois not-for-profit corporation; Sarah Bush Lincoln Health Management Services, an Illinois not-for-profit corporation; Sarah Bush Lincoln Health System, an Illinois not-for-profit corporation, Allison M. Allen, R.N., and Michael Benson, D.O., No. 08L50

Date: March 23, 2023

Plaintiff(s):
- Jaime Campbell, (Female, 0 Years)
- Kiera Campbell, (Female, 1 Years)

Plaintiff Attorney(s):

- Cari F. Silverman; Levin & Perconti; Chicago IL for Jaime Campbell,, Kiera Campbell
- Michael F. Bonamarte IV; Levin & Perconti; Chicago IL for Jaime Campbell,, Kiera Campbell
- Miranda L. Soucie; Spiros Law, P.C.; Kankakee IL for Jaime Campbell,, Kiera Campbell
- Seth L. Cardeli; Levin & Perconti; Chicago IL for Jaime Campbell,, Kiera Campbell

Plaintiff Expert (s):

- J. Stephen Jones M.D.; Fetal Medicine; Tulsa, OK called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- O. Carter Snead III M.D.; Pediatric Neurology; Toronto, Ontario, CA called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- Ron Missun Ph.D.; Economics; Louisville, KY called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- Craig H. Lichtblau M.D.; Physical Medicine; West Palm Beach, FL called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- David S. Gibson M.B.A.; Economics; Chicago, IL called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- Chris Reyes M.R.C., C.R.C.; Vocational Rehabilitation; Tampa, FL called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli
- Charlotte Daniels; Labor & Delivery; Westmont, IL called by: Cari F. Silverman, Michael F. Bonamarte IV, Miranda L. Soucie, Seth L. Cardeli

Defendant(s):

- Michael Benson, D.O.
- Allison M. Allen, R.N.
- Sarah Bush Lincoln Health Center
- Sarah Bush Lincoln Health System
- Sarah Bush Lincoln Health Foundation
- Sarah Bush Lincoln Health Management Services

Defense Attorney(s):

- Michael A. Barry; Pretzel & Stouffer, Chartered; Chicago, IL for Michael Benson, D.O.
- Sommer R. Luzynczyk; Pretzel & Stouffer, Chartered; Chicago, IL for Michael Benson, D.O.
- John F. Watson; Craig & Craig, LLC; Mattoon, IL for Sarah Bush Lincoln Health Foundation, Sarah Bush Lincoln Health Center, Sarah Bush Lincoln Health Management Services, Sarah Bush Lincoln Health System, Allison M. Allen, R.N.
- R. Sean Hocking; Craig & Craig, LLC; Mattoon, IL for Sarah Bush Lincoln Health Foundation, Sarah Bush Lincoln Health Center, Sarah Bush Lincoln Health Management Services, Sarah Bush Lincoln Health System, Allison M. Allen, R.N.

Defendant Expert(s):

- Mark S. Scher M.D.; Pediatric Neurology; Cleveland, OH called by: for Michael A. Barry, Sommer R. Luzynczyk, John F. Watson, R. Sean Hocking
- Mark G. Neerhof M.D.; Fetal Medicine; Evanston, IL called by: for Michael A. Barry, Sommer R. Luzynczyk, John F. Watson, R. Sean Hocking
- David A. Zak M.Ed., C.R.C., L.C.P.; Vocational Assessment; Pittsburgh, PA called by: for Michael A. Barry, Sommer R. Luzynczyk, John F. Watson, R. Sean Hocking
- Jeff Daugherty; Special Education; Belleville, IL called by: for Michael A. Barry, Sommer R. Luzynczyk, John F. Watson, R. Sean Hocking

Facts:

On May 20, 2003, plaintiff Kiera Campbell was born lifeless, limp and blue via Cesarean section at Sarah Bush Lincoln Health Center in Mattoon. Her mother, plaintiff Jaime Campbell, claimed her labor and delivery were negligently performed by obstetrician-gynecologist Dr. Michael Benson and the hospital's nursing staff, including Allison Allen, R.N. The infant was ultimately diagnosed with cerebral palsy, seizure disorder and severe cognitive impairment.

Jaime Campbell, on behalf of herself and her daughter, sued Sarah Bush Lincoln Health Center and its related entities, as well as Benson and Allen. Campbell alleged there was a failure of communication between the treating nurse and the doctor on call, which led to permanent injuries to the infant.

On May 20, 2003, at around 1:50 a.m., Campbell, 40 weeks pregnant, presented to the hospital with symptoms of heavy vaginal bleeding, cramping and abdominal pain. It was determined she had a placental abruption. At 2:04 a.m., Allen contacted Benson, the on-call physician, who was at home. She said she notified him of Campbell's condition. Per plaintiffs' counsel, in the ensuing 30 minutes, Campbell's symptoms only intensified, as the fetal heart rate monitor showed the baby in distress.

At 2:35 a.m., Allen called Benson a second time. Benson then arrived at the hospital by 2:48 a.m. The staff began the delivery process and the baby was born at 3:17 a.m., via C-section.

Campbell's expert in fetal medicine/obstetrics-gynecology testified there was a failure of communication between Allen and Benson because the physician had the impression that Campbell's condition was stable, and that it was adequate to monitor her condition at his residence. However, according to the expert, Campbell's condition was not stable and, in fact, she exhibited classic signs, such as heavy vaginal bleeding, cramping, abdominal pain, to indicate her condition was far more urgent and that the fetus was decompensating. The expert concluded that Benson would have arrived immediately to the hospital to perform an emergency C-section had Allen properly communicated the urgency of Campbell's condition to Benson, which would have prevented the infant's permanent, life-altering injuries.

Campbell's expert in labor and delivery nursing also criticized Allen's failure to communicate accurate information to Benson. The expert further faulted Allen for failing

to appreciate and recognize the fetal heart rate monitoring strips, which showed the baby was in distress.

The defense contended that the hospital staff's handling of Campbell's labor and delivery met the standard of care. The defense's expert in maternal medicine testified that the injury to the fetus occurred contemporaneously with initial signs and symptoms an abruption and prior to admission. The expert opined that communication between Benson and Allen was appropriate and the infant was delivered as emergently and urgently as possible. The defense further maintained that the communication between the physician and nurse was adequate and in no way affected the outcome of the baby's delivery.

Injury:

Upon delivery, Kiera had an Apgar score of one and was not breathing. She required resuscitation efforts and ventilation. Nine hours after her birth, she began suffering seizures and she was ultimately diagnosed with seizure disorder. Keira remained hospitalized for approximately two weeks. She was also diagnosed with cerebral palsy and severe cognitive impairment.

In the ensuing months, the infant was monitored and treated by her pediatrician and was medicated for her seizures. She was later put on extensive courses of occupational, speech and physical therapies, all of which she treated with regularly until she was approximately 9 years old. The occupational and physical therapies addressed spasticity in her arms and legs. From then on, she was enrolled in special education, and continued to be monitored and treated for her seizures. At the time of trial, Kiera, 19, had recently graduated from high school on a fourth- to six-grade aptitude level, and was socializing on a third- to fifth-grade level.

Campbell's expert in pediatric neurology testified that Kiera's injury occurred after the mother arrived at the hospital. Specifically, the expert stated it occurred during the prolonged period when the fetal heart monitoring showed the baby in distress, which was when an emergency C-section should have been performed. Because of the defendants' inaction, according to the expert, the brain was deprived of oxygen, which in turn caused her catastrophic neurological injuries.

According to the plaintiffs' expert in physical medicine, due to Kiera's severely impaired executive function, she will need around-the-clock attendant care.

The plaintiffs' expert in vocational rehabilitation testified that Keira's job outlook was limited given her cognitive impairment.

According to Kiera's parents, even though she is physically stable, Kiera struggles with executive functioning, which prevents her from caring independently for herself, managing tasks and interacting with others. Throughout high school, she was able to participate in school sports, like basketball and track and field, and worked part-time at a hardware store.

The plaintiffs sought to recover $5 million in costs for future attendant care and $1.7 million to $2.5 million in future lost earnings, plus damages for future disability and past and future emotional distress and pain and suffering.

The defense's expert in pediatric neurology testified that the neurological injuries occurred at the inception of a placental abruption, which was prior to her presentation at the hospital.

The defense's expert in special education testified that, since Kiera was able to earn her high-school diploma, she was intellectually capable of going onto community college and working successfully part-time or more.

According to the defense's expert in vocational rehabilitation, Kiera sustained no appreciable wage loss given her promising vocational outlook.

Result: The jury found both Allen and Sarah Bush Lincoln Health Center were negligent, but that Benson was not negligent. It determined that Kiera Campbell's damages totaled $40 million.

Kiera Campbell

$ 4,000,000 Future Lost Earnings

$ 500,000 Past Pain Suffering

$ 750,000 past emotional distress

$ 20,000,000 future disability

$ 4,750,000 future emotional distress

$ 5,000,000 future caretaking expenses

$ 5,000,000 past disability

$ 40,000,000 Plaintiff's Total Award

Jaime Campbell

Trial Information:

Judge:	Mark E. Bovard
Trial Length:	3 weeks
Trial Deliberations:	3 hours
Editor's Comment:	This report is based on information that was provided by counsel for plaintiffs and Benson. Counsel for Allen and the Sarah Bush Lincoln defendants did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Plaintiff: Excercise machine hospitalized senior

Type: Verdict-Plaintiff

Amount: $40,000,000

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Hayward, CA

Injury Type(s):
- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5
- *head* - concussion
- *neck* - fusion, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6

Case Type:
- *Products Liability* - Strict Liability

Case Name: John Cooper v. Technogym USA Corp., 24 Hour Fitness USA, Inc. and Technogym SPA, No. RG17882459

Date: April 03, 2023

Plaintiff(s):
- John Cooper, (Male, 70 Years)

Plaintiff Attorney(s):
- Joseph S. May; Law Office of Joseph S. May; San Francisco CA for John Cooper
- Craig M. Peters; Altair Law, LLP; San Francisco CA for John Cooper
- Mark T. Baller; Attorney at Law; San Diego CA for John Cooper

Defendant(s):
- Technogym SPA
- Technogym USA Corp.
- 24 Hour Fitness USA, Inc.

Defense Attorney(s):
- David M. Hillings; Clinton & Clinton; Long Beach, CA for Technogym USA Corp.
- Christian L. Woods; Clinton & Clinton; Long Beach, CA for Technogym USA Corp.

Facts:

On Dec. 24, 2015, plaintiff John Cooper, 70, a general contractor, was at a 24 Hour Fitness gym in Walnut Creek, where he was preparing to use the Excite Top upper body trainer, which is similar to an exercise bike, but instead of using one's feet to turn the pedals, the user uses their hands to turn the handles. The machine has a removable seat that can slide forward and backward on a track. Cooper sat on the seat and pulled the handle directly beneath the seat in an attempt to move the seat back. However, he alleges, the seat moved back very quickly and without warning, completely off of the track. Cooper fell backwards onto the floor, where he alleges he injured his head, neck and back.

Cooper sued the seller and distributor of the product, Technogym USA Corp. and the Italian corporation, Technogym SPA, as well as the gym, 24 Hour Fitness USA Inc., alleging product liability. The plaintiff was not able to obtain personal jurisdiction over the Italian corporation and it was removed from the case. The gym, 24 Hour Fitness, was dismissed and removed from the case after filing a motion for summary judgment prior to trial.

Cooper's counsel contended there were no warnings or instructions on the Excite Top or at the gym, stating that the seat should not be adjusted while the user is sitting on it or that the seat on the machine slides back quickly when the handle is pulled and can unexpectedly come off the Excite Top completely.

Defense counsel contended the machine was not defective and Cooper was at fault. According to the defense, Cooper, his wife and teenage son were engaged in a competition on the day of the incident, to see who could obtain the fastest speed while using the machine. The defense claimed that Cooper's wife and son competed first, without incident, while the plaintiff watched, and then Cooper, who the defense claims had never used the machine prior to this day, jumped onto the Excite Top to join the competition. Cooper, the defense recounted, attempted to adjust the machine's seat while engaged in the competition, causing it to go backward and resulting in his fall.

Injury:

Cooper went to a hospital on the day of the incident. He suffered a possible concussion and was later diagnosed with herniations at C4-5, C5-6 and at L4-5.

For treatment, Cooper underwent a C4-6 fusion, followed by an L4-5 fusion. There remains a potential for another cervical fusion in the future.

Cooper, a general contractor, owns his own construction company and has continued to work since the incident. However, according to his counsel, there has been a significant reduction in the amount of work he was able to obtain post-injury.

Cooper claimed, while the surgeries helped stop the progression of his pain and discomfort, he has continued to experience pain and discomfort on a daily basis. According to Cooper, the pain makes it difficult for him to sleep in his own bed, so he sleeps in a recliner each evening instead. He sought recovery only for his past and future pain and suffering.

Defense counsel contended that Cooper already had a compromised spine from years of work and that these surgeries were a result of degeneration from age and his prior work. Additionally, the defense counsel argued that Cooper had no plans to retire.

Result:

The jury found that Technogym’s Excite Top machine failed to perform as safely as an ordinary consumer would have expected when used in an intended, reasonably and foreseeable way. The jury found that Technogym Excite Top's design was a substantial factor in causing harm to Cooper and awarded the plaintiff $40 million.

The jury found that conduct constituting malice was committed by one or more officers or directors of Technogym USA Corp. acting on behalf of the company. Before a trial on the appropriate amount of punitive damages, Technogym USA agreed to settle the case for $40 million.

John Cooper

$ 25,000,000 Future Pain Suffering

$ 15,000,000 Past Pain Suffering

$ 40,000,000 Plaintiff's Total Award

Trial Information:

Judge:	Dennis W. Hayashi
Demand:	$5 million
Offer:	$2.5 million
Trial Length:	0
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel and defense counsel for Technogym USA Corp. Remaining defendants were not asked to contribute.
Writer	Priya Idiculla

Company accused of knowingly exposing worker to asbestos

Type: Verdict-Plaintiff

Amount: $40,000,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Central, CA

Injury Type(s):
- *other* - death
- *cancer* - chemotherapy; mesothelioma

Case Type:
- *Wrongful Death*
- *Products Liability* - Design Defect; Failure to Warn; Strict Liability

Case Name: Mary Gaborko, individually and as successor in interest to William Gaborko, deceased, and Mark Gaborko, Lora Rogers and Cheryl Valencia, as legal heirs of William Gaborko, deceased v. 3M Company, et al., No. 19STCV35344

Date: April 07, 2023

Plaintiff(s):
- Lora Rogers, (Female, 0 Years)
- Mark Gaborko, (Male, 0 Years)
- Mary Gaborko, (Female, 0 Years)
- Cheryl Valencia, (Female, 0 Years)
- Estate of William Gaborko, (Male, 84 Years)

Plaintiff Attorney(s):
- Benno B. Ashrafi; Weitz & Luxenberg, P.C.; Los Angeles CA for Estate of William Gaborko,, Mary Gaborko,, Mark Gaborko,, Lora Rogers,, Cheryl Valencia
- Venus Burns; Weitz & Luxenberg, P.C.; Los Angeles CA for Estate of William Gaborko,, Mary Gaborko,, Mark Gaborko,, Lora Rogers,, Cheryl Valencia
- Josiah W. Parker; Weitz & Luxenberg, P.C.; Los Angeles CA for Estate of William Gaborko,, Mary Gaborko,, Mark Gaborko,, Lora Rogers,, Cheryl Valencia
- Leonard Sandoval; of counsel, Weitz & Luxenberg, P.C.; Los Angeles CA for Estate of William Gaborko,, Mary Gaborko,, Mark Gaborko,, Lora Rogers,, Cheryl Valencia

Defendant(s):
- Emerson Electric Co.
- 3M Company FKA Minnesota Mining & Manufacturing Company

Defense Attorney(s):

- Gary D. Sharp; Foley & Mansfield; Los Angeles, CA for Emerson Electric Co.
- Peter B. Langbord; Foley & Mansfield; Los Angeles, CA for Emerson Electric Co.
- Ann I. Park; Foley & Mansfield; Los Angeles, CA for Emerson Electric Co.

Facts:

On Oct. 8, 2019, plaintiffs' decedent William Gaborko, 84, a former electric motor repair worker and owner of C & M Electric, died from mesothelioma, a form of cancer commonly associated with exposure to asbestos. He was diagnosed with mesothelioma in May 2019.

In the late 1950s, William Gaborko was a radioman in the U.S. Navy and then got into electric motor repair in the early 1960s. He did electric motor repair work for decades, during which time he worked with Emerson Electric Co's U.S. Electric Motor brand, which contained asbestos insulation, phase paper and asbestos in the varnish.

William Gaborko's widow, Mary Gaborko and three adult children, Mark Gaborko, Lora Rogers and Cheryl Valencia, sued Emerson Electric Co. and the Minnesota Mining & Manufacturing Company, alleging product liability – strict liability, design defect and failure to warn. The other defendants settled out of court, and were dismissed and the matter proceeded against Emerson Electric Co. only.

Plaintiffs' counsel argued that Emerson Electric Co.'s U.S. Electric Motors brand failed to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way. Plaintiffs' counsel further contended that the company knew the brand had potential risks in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time of the product's manufacture, distribution or sale.

Defense contended the asbestos used in their electric motors was not harmful.

Injury:

William Gaborko underwent chemotherapy in the few months between diagnosis and his passing. His family sought recovery for wrongful death damages for the loss of William Gaborko.

Defense disputed the nature and extent of damages.

Result:

In advance of the verdict, in order to mitigate the effect either side may experience as a result of the jury's verdict, the parties reached a high/low agreement. The jury found for plaintiffs on their claims and awarded them a total of $40 million. The jury apportioned 65 percent negligence to Emerson Electric Co., 10 percent to the U.S. Navy, 12.5 percent to C & M Electric, during the periods when William Gaborko did not own the business and 12.5 percent to William Gaborko.

Cheryl Valencia

$ 5,000,000 Loss of Consortium

$ 5,000,000 Plaintiff's Total Award

Lora Rogers

$ 5,000,000 Loss of Consortium

$ 5,000,000 Plaintiff's Total Award

Mark Gaborko

$ 10,000,000 Loss of Consortium

$ 10,000,000 Plaintiff's Total Award

Mary Gaborko

$ 20,000,000 Loss of Consortium

$ 20,000,000 Plaintiff's Total Award

Estate of William Gaborko

Trial Information:

Judge: Patrick T. Madden

Demand: $300,000 (C.C.P. 998)

Offer:	None
Trial Length:	0
Trial Deliberations:	0
Post Trial:	The total judgment for all plaintiffs shall be entered against Emerson Electric Co. in the amount of $26 million, pursuant to the non-economic damages of each plaintiff applied at 65 percent apportionment against Emerson. Additionally, pursuant to a stipulation reached and placed on the written record on April 6, 2023, all parties agreed to implement a high/low agreement and to waive costs, interest, and post-trial motions including, but not limited to, motions for remittitur, additur, JNOV and all appeals.
Editor's Comment:	This report is based in information that was provided by plaintiffs' and defense counsel for Emerson Electric Co. Remaining defendants were not asked to contribute.
Writer	Priya Idiculla

Failure of care led to death of sickle cell patient, per lawsuit

Type: Verdict-Mixed

Amount: $40,000,000

State: Georgia

Venue: Bibb County

Court: Bibb County, State Court, GA

Injury Type(s):
- *other* - death; organ failure; conscious pain and suffering
- *cardiac* - heart; cardiac arrest
- *pulmonary/respiratory* - respiratory arrest

Case Type:
- *Gross Negligence*
- *Medical Malpractice* - Hospital; Emergency Room; Failure to Admit; Failure to Treat; Delayed Treatment
- *Wrongful Death* - Survival Damages
- *Worker/Workplace Negligence* - Negligent Training; Negligent Supervision; Negligent Credentialing

Case Name: Willie E. Sanford and Yolynda Gardner-Sanford, Individually, and as co-administrators of the Estate of Nykevia Shanice Sanford v. The Medical Center of Central Georgia Inc., William Hsu, M.D., Quantum HC, LLC, Cogent Healthcare of Macon, LLC, Cogent Healthcare of Georgia, PC, Phoebe Sumter Medical Center, Inc., Phoebe Physician Group, Inc., Benjamin C. Andrews, Jr., M.D., Henry N. Burkes, N.P. and ABC, Inc., No. 19-SCCV-089692

Date: June 22, 2023

Plaintiff(s):
- Willie E. Sanford, (Male, 0 Years)
- Nykevia Shanice Sanford, (Female, 25 Years)
- Yolynda Gardner-Sanford, (Female, 0 Years)

Plaintiff Attorney(s):

- Lance D. Lourie; Lourie, Chance, Forlines, Carter & King, PC; Atlanta GA for Willie E. Sanford,, Yolynda Gardner-Sanford,, Nykevia Shanice Sanford
- Stephen R. Chance; Lourie, Chance, Forlines, Carter & King, PC; Atlanta GA for Willie E. Sanford,, Yolynda Gardner-Sanford,, Nykevia Shanice Sanford
- Xavier O. Carter; Lourie, Chance, Forlines, Carter & King, PC; Atlanta GA for Willie E. Sanford,, Yolynda Gardner-Sanford,, Nykevia Shanice Sanford
- Lindsay Forlines; Lourie, Chance, Forlines, Carter & King, PC; Atlanta GA for Willie E. Sanford,, Yolynda Gardner-Sanford,, Nykevia Shanice Sanford

Plaintiff Expert (s):

- Fred Hyde Ph.D.; Hospital Administration & Procedures; Ridgefield, CT called by: Lance D. Lourie, Stephen R. Chance, Xavier O. Carter, Lindsay Forlines
- Bruce S. Perlman M.D.; Internal Medicine; Atlanta, GA called by: Lance D. Lourie, Stephen R. Chance, Xavier O. Carter, Lindsay Forlines
- Julie Kanter M.D.; Hematology; Birmingham, AL called by: Lance D. Lourie, Stephen R. Chance, Xavier O. Carter, Lindsay Forlines
- Caroline E. Freiermuth M.D.; Emergency Medicine; Cincinnati, OH called by: Lance D. Lourie, Stephen R. Chance, Xavier O. Carter, Lindsay Forlines
- Cassandra D. Josephson M.D.; Hematology; Atlanta, GA called by: Lance D. Lourie, Stephen R. Chance, Xavier O. Carter, Lindsay Forlines

Defendant(s):

- ABC, Inc.
- Quantum HC, LLC
- William Hsu M.D.
- Henry N. Burkes N.P.
- Benjamin C. Andrews Jr. M.D.
- Phoebe Physician Group, Inc.
- Cogent Healthcare of Macon, LLC
- Cogent Healthcare of Georgia, PC
- Phoebe Sumter Medical Center, Inc.
- The Medical Center of Central Georgia Inc.,

Defense Attorney(s):

- Kirby G. Mason; HunterMaclean; Savannah, GA for The Medical Center of Central Georgia Inc.
- Robert L. Goldstucker; Nall & Miller, LLP; Atlanta, GA for William Hsu M.D.
- Christopher W. Phillips; HunterMaclean; Savannah, GA for The Medical Center of Central Georgia Inc.
- David N. Nelson; Chambless Higdon Richardson Katz & Griggs LLP; Macon, GA for Phoebe Sumter Medical Center, Inc., Phoebe Physician Group, Inc.
- Laura D. Eschleman; Nall & Miller, LLP; Atlanta, GA for William Hsu M.D.
- Emmitte H. Griggs; Chambless Higdon Richardson Katz & Griggs LLP; Macon, GA for Phoebe Sumter Medical Center, Inc., Phoebe Physician Group, Inc.
- Tivara Paul; Nall & Miller, LLP; Atlanta, GA for William Hsu M.D.
- Shawn H Choi; McGrew Miller Bomar & Bagley, LLC; Atlanta, GA for William Hsu M.D.

Defendant Expert(s):

- Neil R. MacIntyre III M.D.; Orthopedic Surgery; Wilmington, NC called by: for Kirby G. Mason, Christopher W. Phillips
- Mark M. Udden M.D.; Hematology; Houston, TX called by: for Robert L. Goldstucker, Laura D. Eschleman, Tivara Paul, Shawn H Choi
- William F. Brady M.D.; General Practice; College Park, GA called by: for David N. Nelson, Emmitte H. Griggs
- Khaleel K. Ashraf M.D.; Hematology; Birmingham, AL called by: for Kirby G. Mason, Christopher W. Phillips
- Caroline H. Kahle M.D.; Hospitalist Medicine; Saint Louis, MO called by: for Robert L. Goldstucker, Laura D. Eschleman, Tivara Paul, Shawn H Choi

Facts:

A Bibb County State Court jury has returned a $40 million wrongful death verdict against a pair of central Georgia hospitals accused of negligent training that resulted in the prolonged provision of life-saving care.

Plaintiff counsel credit the nine-figure outcome to their ability to convey the defendants' medical breaches through "a compelling story" and captivating demonstratives at trial.

Meanwhile, defense counsel for the only physician cleared of wrongdoing attribute jurors' apportionment of zero liability to their administration of "justice" for the plaintiffs and "fairness" for the co-defendant.

Nykevia S. Sanford had been experiencing a sickle cell pain-management crisis in November 2017 when she sought emergency help from Georgia medical professionals at least three times before her death, according to plaintiff counsel with Lourie, Chance, Forlines, Carter & King, which included Xavier Carter, Stephen Chance, Lindsay Forlines and Lance Lourie.

After Sanford arrived to the Phoebe Sumter Medical Center Emergency Department in Americus complaining of arm and leg pain overnight, an ER physician conducted bloodwork and provided intravenous fluids and pain medication before discharging the deaf woman more than two hours later.

But when Sanford returned in more pain four hours later, plaintiff counsel said the actions of medical professionals on duty during her readmission set off a downward spiral of delayed care that contributed to the 25-year-old's death.

"This time, Nykevia saw a nurse practitioner named Henry Burkes," read the plaintiff's consolidated pre-trial order. "Mr. Burke's spoke with emergency room physician Dr. Benjamin Andrews about Nykevia, but Dr. Andrews never saw Nykevia himself."

Instead, plaintiff counsel said the ER physician recommended the nurse practitioner treat Sandford's new symptoms of nausea and vomiting and her complaints of worsening and spreading pain with more fluids and medication before conducting a follow-up

reevaluation.

"A chest X-ray was performed at this visit, which was clear. Mr. Burkes did not do a repeat check of Nykevia's laboratory bloodwork," the plaintiff order read. "Nykevia was discharged from the emergency department the second time just before 1 p.m."

However, plaintiff counsel said the Sanford family returned roughly eight hours later desperate for life-saving aid.

With Sanford "short of breath and wheezing," on-duty Phoebe Sumter ER physician Dr. Dale Lawson provided her supplemental oxygen and ordered a new chest X-ray that "showed fluid on her lungs," per plaintiff counsel.

"She worsened into a condition called acute chest syndrome," said Forlines. "What that means is that the sickle cell pain crisis is now impacting your respiratory function and your ability to breathe."

Having determined Sanford "needed to receive higher care than Phoebe Sumter could provide at that time," Lawson called the Medical Center of Central Georgia in Macon and spoke with Dr. William Hsu to arrange her transfer via medical helicopter, according to court documents.

"Unfortunately, that's where things really started going downhill," Forlines said. "This was in the middle of the night and there was just a lot of miscommunication and lack of coordination. They sent her over there, but none of the doctors knew how to execute the procedure she would need, which was a type of blood transfusion called an exchange transfusion."

Forlines said the Macon hospital could only order the transfusion through the American Red Cross by "getting [its] employees from different areas of the state to come," but that Hsu, as a locum tenens or fill-in physician, had been "very unfamiliar" with what the Medical Center of Central Georgia could provide when accepting Sanford's transfer.

Only after other hospital specialists relayed to Hsu that "it was not known how to arrange for an exchange transfusion at that time," did the defendants arrange for Sanford's more than 80-mile transport to Grady Memorial Hospital, per plaintiff counsel.

"Sadly, they lost about at least five hours by stopping in Macon," Forlines told the Daily Report." Tragically, 10 minutes out from Grady she coded. They were able to resuscitate her, but her body had been through too much delay. She died the next day."

Representing Sanford's parents, plaintiff counsel brought a wrongful death complaint against both hospitals, as well as hired and contracted advising and treating staff.

Macon attorneys Emmitte H. Griggs and David N. Nelson of Chambless, Higdon, Richardson, Katz & Griggs represented Phoebe Sumter but did not respond to a Daily Report request for comment.

The defense duo reached a confidential high-low settlement agreement with the plaintiffs on behalf of their corporate client, according to plaintiff counsel.

A request for comment also went unanswered by Savannah attorneys Kirby G. Mason and Christopher W. Phillips of Hunter, Maclean, Exley & Dunn, who defended the Medical Center of Central Georgia. Having declined the defense team's $250,000 pre-trial settlement, plaintiff counsel said the matter proceeded to trial before Bibb County State Court jurors on June 5.

Gathered before Chief Judge Jeff Hanson, Carter said plaintiff counsel focused its trial strategy on telling "a compelling story" of how negligent medical training contributed to the untimely death of a woman who'd been unwilling to be defeated by her deafness.

"She wanted to be a nurse who could provide care to hearing disabled people," he said.

From writing key points down on flip charts to PowerPoint presentations and storyboards depicting compiled data about the defendants' failures, Carter said the plaintiff team utilized a variety of demonstratives to connect with jurors.

For starters, Carter called the jury's attention to Phoebe Sumter staff's decision to discharge Sanford a second time without conducting a second round of bloodwork despite her worsened condition at readmission.

"By that third ER visit, she had become very sick," Carter said. "They intubated her."

Plaintiff counsel also focused the jury's attention on the absence of clear-cut directives at the Medical Center of Central Georgia and the role it played in Sanford's decline and demise.

"Yes, there were clinical errors on the part of the doctors, but those were really a result of the hospital not having proper standard operating procedures in place to make sure that, in the middle of the night when there's an emergency, everybody knows what they're supposed to do," Forlines said.

After several weeks of trial and two hours of deliberation, jurors agreed, returning a $40 million verdict in favor of the plaintiffs.

The state court jury split fault between the two hospitals. Of the 50%, fault apportioned to Phoebe Sumter, 30% went to the advising physician and 20% to the treating nurse practitioner who cared for Sanford prior to her second discharge.

However, jurors assessed no fault against Hsu, the independent contractor who'd admitted Sanford to the Medical Center of Central Georgia while filling-in overnight.

Atlanta attorneys Laura D. Eschleman and Shawn H. Choi of Nall & Miller and Tivara Paul, formerly with Nall & Miller, handled Hsu's defense.

Maintaining their position that "this case is about justice for the Sanfords, and fairness for Dr. William Hsu," defense counsel Choi applauded the jury "for dedicating nearly three weeks of their time and attention to this important trial."

"The evidence showed Dr. William Hsu cared deeply about the Sanford family and that he went above and beyond to give Nykevia Sanford a fighting chance," Choi told the Daily Report. "The jury's finding of no-fault as to Dr. William Hsu despite their $40,000,000 award to the Sanford family tells us that they understood what this case was truly about: justice for the Sanfords, and fairness for Dr. William Hsu."

Eschleman agreed

"This was a tough case tried by great attorneys on all sides," Eschleman said. "We had one of the most attentive juries I have ever seen, especially given the length of the trial, and at the end of it, they were fair to Dr. Hsu and did right by him."

Injury:

Sanford experienced arm, leg and back pain, nausea and vomiting, and also developed shortness of breath and wheezing. She was given supplemental oxygen while at Phoebe Sumter Medical Center Emergency Department. A chest X-ray showed fluid on her lungs. She was diagnosed with acute chest syndrome, a life-threatening complication of sickle cell disease.

Just after midnight on Nov. 14, 2017, Sanford was transferred to the Medical Center of Central Georgia by medical helicopter. The emergency room physician noted that Sanford was in need of an exchange transfusion, which is a specialized type of blood transfusion for patients suffering from acute chest syndrome. The hospital did not have anyone available who was experienced in performing an exchange transfusion, so Sanford was then transferred to Grady Hospital by ambulance.

While en route to Grady, Sanford suffered cardiac arrest, although EMS personnel were able to revive her. Upon arrival at Grady, medical personnel started blood transfusions. However, Sanford died on Nov. 15, 2017.

An autopsy reportedly determined that Sanford had suffered multi system organ failure and acute respiratory failure because of the acute chest syndrome.

The defendants disputed causation with regard to Sanford's death, as well as damages.

Result:

The jury awarded $35 million to Willie E. Sanford and Yolynda Gardner-Sanford, individually, and $5 million to the estate of Nykevia Sanford, for a total of $40 million. The jury apportioned 30 percent fault to Andrews and 20 percent fault to Burkes, both of whom were employed by Phoebe Physician Group Inc., and 50 percent fault to the Medical Center of Central Georgia Inc. for administrative negligence. The jury apportioned no fault to Lawson (non-party), Hsu, Sumrall (non-party) or Medical Center of Central Georgia Inc. with regard to the actions of its employee Billings.

Estate of Nykevia Sanford

$ 5,000,000 wrongful death damages

$ 5,000,000 Plaintiff's Total Award

Yolynda Gardner-Sanford

$ 17,500,000 wrongful death damages

$ 17,500,000 Plaintiff's Total Award

Willie Sanford

$ 17,500,000 wrongful death damages

$ 17,500,000 Plaintiff's Total Award

Trial Information:

Judge:	Jeffrey B. Hanson
Trial Length:	3 weeks
Trial Deliberations:	2 hours
Editor's Comment:	This report is based on an article published by VerdictSearch's sister publication, the Daily Report, an ALM publication.
Writer	Jason Cohen

University and doctor conflict over how to invest donation: lawsuit

Type: Verdict-Plaintiff

Amount: $39,628,772

State: California

Venue: San Diego County

Court: Superior Court of San Diego County, San Diego, CA

Injury Type(s):
- *mental/psychological* - emotional distress

Case Type:
- *Employment* - Retaliation; Whistleblower; Wrongful Termination
- *Corporations* - Breach of Duty of Loyalty

Case Name: The Regents of the University of California v. Kevin T. Murphy, Kevin T. Murphy, M.D. and Peaklogic Inc. / Kevin Murphy M.D. v. The Regents of the University of California and Arno J. Mundt ESA AJ Mundt M.D., No. 37-2020-00032541-CU-BT-CTL

Date: August 02, 2023

Plaintiff(s):
- Kevin Murphy, M.D. (Male, 55 Years)
- The Regents of the University of California (, 0 Years)

Plaintiff Attorney(s):
- Mark T. Quigley; Greene Broillet & Wheeler, LLP; El Segundo CA for Kevin Murphy, M.D.
- Ivan Puchalt; Greene Broillet & Wheeler, LLP; Santa Monica CA for Kevin Murphy, M.D.

Defendant(s):
- Arno J. Mundt
- Kevin T. Murphy
- Peaklogic Inc.
- Kevin T. Murphy, M.D.
- The Regents of the University of California

Defense Attorney(s):

- Douglas A. Pettit; Pettit Kohn Ingrassia Lutz & Dolin PC; San Diego, CA for Kevin T. Murphy, Kevin T. Murphy, M.D., Peaklogic Inc.
- Robert D. Eassa; Duane Morris LLP; San Francisco, CA for The Regents of the University of California, Arno J. Mundt
- Matthew C. Smith; Pettit Kohn Ingrassia Lutz & Dolin PC; San Diego, CA for Kevin T. Murphy, Kevin T. Murphy, M.D., Peaklogic Inc.

Facts:

On Dec. 13, 2016, the University of California president authorized acceptance of a gift of $10 million from an estate to the UC San Diego Foundation, a nonprofit corporation created to help UC San Diego obtain and manage private gifts in support of research, teaching and public service. Prior to this, plaintiff Kevin Murphy, a department chair and oncologist, had a former patient that passed away and gifted the foundation the $10 million, originally designated to support cancer research. However, the former patient's widow provided a June 2, 2016 letter to the foundation stating that the purpose of the gift was to finance Murphy's personalized rapid transcranial magnetic stimulation (PrTMS) research at UC San Diego. PrTMS is an experimental brain stimulation treatment designed to help those with mental and cognitive issues. Although Murphy began steps to establish a UC San Diego clinic for the purpose of conducting PrTMS-related medical research after the gift funds became available, he never received permission to conduct clinical trials for PrTMS-related research through UC San Diego.

While Murphy insisted that the funds were designated for his research initiatives, UC San Diego administrators claimed that he violated their policies by utilizing the money for his business interests.

On July 1, 2019, Murphy resigned from his faculty appointment and accepted employment with the University of California regents as a part-time associate physician diplomate. The regents did not renew Murphy's contract however, making June 30, 2020, his final date of employment with the regents.

The Regents of the University of California sued Murphy and his research organization, Peaklogic Inc., alleging breach of Murphy's duty of loyalty as an employee.

Murphy countersued the regents and his former supervisor, Dr. Arno J. Mundt, alleging whistleblower retaliation.

The regents contended Murphy used university resources and funding to enrich himself and his businesses. Specifically, the regents argued Murphy set up private PrTMS businesses without university approval. The regents also contended Murphy used the technology on patients at his private clinic without university permission.

Murphy countered that UC San Diego tried to use the large donation for their own purposes, interfered with his research and punished him for filing complaints about what happened by not renewing his employment contract.

Injury: The regents sought recovery for compensatory damages against Murphy. They also sought punitive damages against him.

Murphy sought recovery for his past and future loss of pay and his past and future emotional distress from the events.

Result: The jury awarded the regents $67,000 for their claim of breach of duty of loyalty by an employee against Murphy. Additionally, the jury awarded $39,628,772 against the regents on Murphy's claims of whistleblower retaliation.

The Regents of the University of California

$ 67,000 Compensatory Damages

$ 67,000 Plaintiff's Total Award

Kevin Murphy

$ 10,000,000 Future Non-economic Loss

$ 1,459,394 Past Economic Loss

$ 20,000,000 Past Non-economic Loss

$ 8,169,378 Future Economic Loss

$ 39,628,772 Plaintiff's Total Award

Trial Information:

Judge: James A. Mangione

Trial Length: 0

Trial Deliberations:	0
Editor's Comment:	This report is based on information that was gleaned from court documents and an article that was published by kpbs.org. Plaintiff's and defense counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla

Eyelash growth patent was infringed, plaintiffs alleged

Type: Verdict-Plaintiff

Amount: $39,000,000

State: Colorado

Venue: Federal

Court: U.S. District Court, District of Colorado, Denver, CO

Case Type:
- *Intellectual Property* - Patents; Infringement

Case Name: Duke University and Allergan Sales, LLC v. Sandoz Inc. and Alcon Laboratories, Inc., No. 1:18-cv-00997

Date: March 31, 2023

Plaintiff(s):
- Duke University (, 0 Years)
- Allergan Sales LLC (, 0 Years)

Plaintiff Attorney(s):

- Lisa B. Pensabene; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Timothy S. Durst; O'Melveny & Myers LLP; Dallas TX for Duke University, Allergan Sales LLC
- Hassen Sayeed; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Katie A. Reilly; Wheeler Trigg O'Donnell LLP; Denver CO for Duke University, Allergan Sales LLC
- Caitlin P. Hogan; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- James Yi Li; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Carolyn S. Wall; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Amy Zhao; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Lindsay Hersh Autz; O'Melveny & Myers LLP; New York NY for Duke University, Allergan Sales LLC
- Jacob A. Rey; Wheeler Trigg O'Donnell LLP; Denver CO for Duke University, Allergan Sales LLC

Plaintiff Expert (s):

- Allen B. Reitz Ph.D.; Medicinal Chemistry; Philadelphia, PA called by: Lisa B. Pensabene, Timothy S. Durst, Hassen Sayeed, Katie A. Reilly, Caitlin P. Hogan, James Yi Li, Carolyn S. Wall, Amy Zhao, Lindsay Hersh Autz, Jacob A. Rey
- Robert Maness Ph.D.; Economics; College Station, TX called by: Lisa B. Pensabene, Timothy S. Durst, Hassen Sayeed, Katie A. Reilly, Caitlin P. Hogan, James Yi Li, Carolyn S. Wall, Amy Zhao, Lindsay Hersh Autz, Jacob A. Rey
- Suzanne Bruce M.D.; Dermatology; Houston, TX called by: Lisa B. Pensabene, Timothy S. Durst, Hassen Sayeed, Katie A. Reilly, Caitlin P. Hogan, James Yi Li, Carolyn S. Wall, Amy Zhao, Lindsay Hersh Autz, Jacob A. Rey

Defendant(s):

- Sandoz Inc.
- Alcon Laboratories Inc.

Defense Attorney(s):

- Thomas J. Filarski; Steptoe & Johnson LLP; Chicago, IL for Sandoz Inc.
- Vishal C. Gupta; Steptoe & Johnson LLP; New York, NY for Sandoz Inc.
- Robert F. Kappers; Steptoe & Johnson LLP; Chicago, IL for Sandoz Inc.
- Katherine Tellez; Steptoe & Johnson LLP; Chicago, IL for Sandoz Inc.
- William M. Jay; Goodwin Procter LLP; Washington, DC for Sandoz Inc.

Defendant Expert(s):

- Mohan P. Rao Ph.D; Economics; Chicago, IL called by: for Thomas J. Filarski, Vishal C. Gupta, Robert F. Kappers, Katherine Tellez, William M. Jay
- Clayton H. Heathcock Ph.D.; Medicinal Chemistry; Martinez, CA called by: for Thomas J. Filarski, Vishal C. Gupta, Robert F. Kappers, Katherine Tellez, William M. Jay
- Timothy T. Hla Ph.D.; Biochemistry; Boston, MA called by: for Thomas J. Filarski, Vishal C. Gupta, Robert F. Kappers, Katherine Tellez, William M. Jay

Facts:

In July 2017, plaintiff Duke University, assignee of a patent on a drug to treat hair loss, claimed that Sandoz Inc. was infringing the patent by marketing and selling a generic version. Sandoz had launched the generic version in December 2016.

The subject patent was issued in February 2017 and was titled “Compositions and Methods for Treating Hair Loss Using Non-Naturally Occurring Prostaglandins.” The patent expired in January 2021.

Plaintiff Allergan Sales, LLC, held the exclusive license to the patent. Allergan markets and sells the patented drug, bimatoprost ophthalmic solution, 0.03 percent, under the brand name Latisse. The active ingredient, bimatoprost, is a molecule of the class known as prostaglandins. The drug was approved by the FDA in 2008 for treatment for hypotrichosis of the eyelashes. It promotes eyelash growth, including length, thickness and darkness, and is available only with a prescription.

The plaintiffs alleged Latisse was a commercial success. Net sales of the drug were $70 million in its first year and averaged $85 million a year until 2017. According to the plaintiffs, the accused Sandoz product is chemically identical to Latisse. Alcon Laboratories Inc. is the manufacturer of the Sandoz product.

Duke and Allergan sued Sandoz. The lawsuit alleged patent infringement. The plaintiffs also sued Alcon, but those claims were severed in 2018 and then voluntarily dismissed.

The plaintiffs alleged the infringement by Sandoz was willful. However, the court dismissed the willfulness claim during trial.

At trial, Sandoz did not dispute infringement, but did contend that the patent-in-suit was invalid due to obviousness, lack of adequate written description and lack of enablement. The defense also argued that any commercial success of Latisse lacked a nexus with the patent-in-suit and did not weigh against the patent's obviousness.

Injury:

The plaintiffs argued that sales of Latisse plummeted as a result of Sandoz’s infringement. The plaintiffs sought about $43 million in damages.

Sandoz contended that the decline in sales of Latisse resulted in part from Allergan's decision to stop marketing the drug aggressively. If the jury did not find the patents invalid, the defense argued, it should award damages of $22.9 million.

Result: The jury did not find the patent-in-suit to be invalid on any of the asserted grounds. It determined that the plaintiffs' damages for infringement totaled $39 million.

According to a statement issued by Sandoz, "[t]his is the fourth case in a series of patent infringement actions by Allergan dating back to 2011 in connection with Allergan's Latisse® product and Sandoz's bimatoprost ophthalmic solution, 0.03 percent, product, with Sandoz prevailing in the three prior cases."

Allergan Sales LLC

Duke University

Trial Information:

Judge: Raymond P. Moore

Trial Length: 0

Trial Deliberations: 0

Post Trial: Sandoz is considering its options, including appeals.

Editor's Comment: This report is based on court documents and information that was provided by plaintiffs' counsel and a Sandoz representative.

Writer John Schneider

Heart transplant patient died following surgery

Type: Verdict-Mixed

Amount: $38,669,631

State: Georgia

Venue: DeKalb County

Court: DeKalb County, State Court, GA

Injury Type(s):
- *other* - death
- *cardiac* - heart
- *arterial/vascular* - internal bleeding

Case Type:
- *Wrongful Death* - Survival Damages
- *Medical Malpractice* - Surgical Error; Cardiac Surgery; Failure to Test

Case Name: Barbara Brown, natural parent of Trevon Falson and Barbara Brown as administrator of the Estate of Trevon Falson v. Emory Healthcare Inc., Emory University, The Emory Clinic, Inc. and Duc Q. Nguyen , M.D., No. 18A72075

Date: November 09, 2023

Plaintiff(s):
- Barbara Brown, (Female, 0 Years)
- The estate of Trevon Falson, (Male, 18 Years)

Plaintiff Attorney(s):
- Richard W. Hendrix; Finch McCranie LLP; Atlanta GA for The estate of Trevon Falson,, Barbara Brown
- David Hanson; Hanson Fuller LLC; Atlanta GA for The estate of Trevon Falson,, Barbara Brown
- Lee Gutschenritter; Finch McCranie LLP; Atlanta GA for The estate of Trevon Falson,, Barbara Brown

Defendant(s):
- Emory University
- Duc Q. Nguyen M.D.
- Emory Healthcare, Inc.
- The Emory Clinic, Inc.

Defense Attorney(s):

- Gary R. McCain; Bendin Sumrall & Ladner, LLC; Atlanta, GA for Emory Healthcare, Inc., Emory University, The Emory Clinic, Inc., Duc Q. Nguyen M.D.
- Joscelyn M. Hughes; Bendin Sumrall & Ladner, LLC; Atlanta, GA for Emory Healthcare, Inc., Emory University, The Emory Clinic, Inc., Duc Q. Nguyen M.D.

Facts:

DeKalb County State Court jurors have awarded $38.6 million in damages to the mother of an 18-year-old who died following a heart transplant conducted by a surgeon employed by Emory Healthcare Inc.

Plaintiff counsel credit the eight-figure outcome to their ability to "keep the case simple" for jurors, while also "impeaching many of Emory's experts" during the medical-malpractice trial.

Lead plaintiff counsel Lee Gutschenritter of Finch McCranie in Atlanta teamed with law partner Richard Hendrix and Hanson & Fuller litigator David Hanson to represent Barbara Brown following the 2017 wrongful death of her son, Trèvon Falson.

Plaintiff counsel contend Falson's death resulted from Emory Healthcare Inc. providers' failure to test the condition of a heart pump installed in 2016 before Dr. Duc Q. Nguyen proceeded with Falson's heart transplant surgery a year later.

According to plaintiff counsel, with the installation of the pump comes "a risk [that] patients will develop scar tissue inside the chest and that important structures like the heart [and] aorta … may migrate postoperatively," rendering them "stuck directly to the back of the sternum."

Despite a 13-month window between the time of Falson's mechanical heart pump installation and heart transplant surgeries, plaintiff counsel said, "Emory never obtained a simple chest CT [or Computed Tomography] scan to see whether there were structures adhered to the back of the chest."

"When a donor heart finally became available, 14 minutes into the start of the surgery, while the defendant surgeon was using an oscillating saw to cut through the patient's chest, he immediately encountered massive bleeding which caused Trévon to lose two-thirds of the blood in his body," Gutschenritter told the Daily Report. "Unknown to the defendant surgeon or anyone else at Emory, the outflow graft had become adhered, or stuck, to the back of the chest. Trévon was immediately placed on life support, and the providers at that point had no choice but to go forward with the transplantation. Due to the cascade of problems that resulted from the massive bleed, the donor heart was unable to function. Trévon was placed on life support where he remained for six weeks until he passed away on Christmas day, December 25, 2017."

Per the subsequent plaintiff complaint filed by Brown in November 2018, "the post-transplantation complications suffered by Trévon and his ultimate death were a direct

result of the massive bleed caused by the laceration to the outflow graft during the transplant surgery on November 2, 2017."

Rusty McCain and Joselyn Hughes of Bendin Sumrall & Ladner in Atlanta led the Emory co-defendants' defense but did not respond to a Daily Report request for comment.

Opposing counsel's clients proved equally unresponsive to plaintiff counsel's attempts to negotiate what Gutschenritter considered to be "a reasonable settlement value" to resolve the medical-malpractice matter.

"For nearly five years, Emory refused to offer anywhere close to the amount of the outstanding medical lien," Gutschenritter said.

Unable to reach a resolution, the case proceeded to a jury trial five years later on Oct. 30, 2023.

Gathered before DeKalb County State Court Judge Mike Jacobs, Gutschenritter said plaintiff counsel centered its trial strategy on trying "an efficient and simple case."

"The crux of the case was the failure to obtain a chest CT after the placement of the mechanical heart pump and before the heart transplant over a year later," Gutschenritter told the Daily Report. "It is undisputed that, if Emory would have ordered this imaging study, it would have shown that a portion of the mechanical heart pump called the outflow graft, which connects to the aorta, was stuck directly to the back of Trévon's chest. If they had known this information, a number of safety measures could have been implemented to mitigate the extent of the injury or avoid it altogether."

Gutschenritter said plaintiff counsel had to overcome litigation and causation defenses presented by opposing counsel. In order to do so, the plaintiff team called standard-of-care and causation experts to the stand.

Across the aisle, Gutschenritter said defense counsel countered with a half-dozen experts of its own, "including four Emory physicians and the director of the Emory Heart Transplant program."

As argued in a consolidated pre-trial brief, defense counsel contended the healthcare co-defendants lacked liability for Falson's death.

Rather than the patient dying as a result of "the injury to the outflow graft," defense counsel argued Falson's donor heart failed to function following transplantation because of "primary graft failure, where the donor heart simply fails to work for unknown

reasons even when there are no complications whatsoever with the transplant surgery."

"Primary graft failure is a dreaded consequence of heart transplant surgery and happens in up to 30% of heart transplant surgeries based on reported studies and is associated with significant mortality. Mr. Falson had multiple risk factors for primary graft failure, which could not be avoided, and the donor heart was also at risk for primary graft failure. Hence, it is Defendants' position that the injury to the outflow graft during Mr. Falson's heart transplant surgery did not cause or contribute to the donor heart not functioning," the defense brief read. "Moreover, Defendants deny that Mr. Falson's subsequent death was related in any way to the injury to the outflow graft in this case. Accordingly, Defendants deny that they are liable to Plaintiffs for any amount whatsoever."

To help overcome liability and causation defenses, Gutschenritter said plaintiff counsel leveraged peer-review articles collected over the course of the five years of litigation to support its position. When opposing counsel refrained from doing the same, plaintiff counsel brought it to the jury's attention.

"I pointed out in closings that a large institutional hospital like Emory, that does a substantial amount of medical research, never offering a single article in support of their case spoke volumes about the credibility of their defenses," Gutschenritter said.

Plaintiff counsel led the jury to further question the credibility "of Emory's paid experts and employee physicians" who'd testified under oath by highlighting stated discrepancies. According to Gutschenritter, Emory's final expert testified he "absolutely never orders chest CTs in these circumstances," after deeming it "totally unnecessary."

"He was on direct examination offering this testimony for an hour and a half," Gutschenritter told the Daily Report. "My cross [examination] lasted less than three minutes, and I impeached him with a peer-reviewed article that he authored in April 2010 specifically advising that a chest CT should be ordered in these circumstances."

Gutschenritter said plaintiff counsel succeeded at impeaching three more of Emory's six expert witnesses during trial.

But before the jury could hear defense counsel's final witness and closing arguments, plaintiff counsel said the proceeding took an unexpected turn when a juror tested positive for COVID-19 on the trial's last day.

With the juror excused and an alternate in place, litigators rested their arguments on Nov. 9.

"We put up our case in two days. It took Emory four days to put up their portion of the

case," Gutschenritter said. "I think the lines were drawn, and the jury had a clear understanding of the issues very early on in the case."

After two weeks of trial and about seven hours of deliberations, DeKalb State Court jurors returned a verdict awarding $38.6 million in damages to the plaintiff.

They awarded $6 million for pre-death pain and suffering, $30 million for the wrongful-death value of Falson's life and $2.6 million for outstanding medical bills amounted to "the largest medical malpractice verdict ever against Emory," according to Gutschenritter.

"We were told after the fact that, when the jury took their initial vote, it was 10-2 in our favor." Gutschenritter said. "The full day of deliberations was largely centered on liability issues. Once all 12 jurors agreed on liability and causation, they awarded exactly what I asked for in damages during closings."

Gutschenritter said the verdict filled him with a sense of gratitude, noting it'd been "a hard-fought five years of litigation." Plaintiff counsel said the matter could have been resolved sooner, had opposing counsel engaged in "a reasonable effort to resolve the case when it was mediated two years ago during the height of COVID."

"This case could have been settled for a very small fraction of the overall verdict," Gutschenritter said." For the jury to vindicate everything we had been saying for that period of time was immensely satisfying, and we were incredibly happy for our client. Our client, Trévon's mother, told me the verdict finally brought her a sense of closure six years after the death of her son."

Injury:

Falson suffered from a massive bleed caused by a laceration to the outflow graft during heart transplant surgery. Due to the bleed, the donor heart was unable to function and Falson was placed on life support. He remained on life support for six weeks until his death on Dec. 25, 2017.

Falson's estate sought damages for Falson's pre-death pain and suffering, the wrongful-death value of his life and $2,669,631.41 in outstanding medical bills.

The defense disputed causation and damages. The defense argued that Falson had multiple risk factors for primary graft failure, which could not be avoided, and the donor heart was also at risk for primary graft failure. Per the defense, the injury to the outflow graft during the heart transplant surgery did not cause or contribute to the donor heart not functioning. The defense further argued that Falson's death was not related in any way to the injury to the outflow graft during surgery.

Result: The jury found the Emory defendants liable for medical malpractice, but no liability on the part of Nguyen. It awarded $6 million for Falson’s pre-death pain and suffering, $30 million for the wrongful-death value of Falson’s life and $2,669,631.41 for outstanding medical bills, for a total of $38,669,631.41.

Barbara Brown

Estate of Trevon Falson

$ 6,000,000 Past pain and suffering

$ 2,661,631.41 Past medical costs

$ 30,000,000 Value of Falson's life

$ 38,661,631.41 Plaintiff's Total Award

Trial Information:

Judge: Mike Jacobs

Trial Length: 2 weeks

Trial Deliberations: 7 hours

Editor's Comment: This report is based on an article published by VerdictSearch's sister publication, the Daily Report, an ALM publication.

Writer Jason Cohen